

Première traduction en langue anglaise : Juriscope, mars 2006 (texte en français à la date du 23 janvier 2006)

Mise à jour et refonte réalisées en 2011 par le centre de traduction des ministères économique et financier avec le concours de la direction générale du Trésor, du Fonds monétaire international et du cabinet Gide Loyrette Nouel (texte en français à la date du 1<sup>er</sup> novembre 2010).

# Book I THE CURRENCY

## PART I GENERAL PROVISIONS

### Chapter I The Currency Unit

Article L. 111-1. - The currency of France is the euro. A euro is divided into one hundred cents.

*(Art. L. 111-2 Repealed by Order No. 2005-429 amending the Monetary and Financial Code Art. 12 Official Journal of 7 May 2005)*

### Chapter II Rules Governing the Use of the Currency

#### Section 1 Indexation

Article L. 112-1. - Without prejudice to the provisions of the first paragraph of Article L. 112-2 and Articles L. 112-3, L. 112-3-1, and L. 112-4, the automatic indexation of prices of goods or services shall be prohibited.

Any clause in a successive performance contract, including leases and rental agreements of any kind, which provides for an index variation period that is longer than the interval between each revision shall be deemed to be omitted.

In an agreement pertaining to a housing unit, any clause that provides that indexation must be linked to the "rents and charges" index on which are based the general retail price indexes shall be prohibited. The same applies to any clause according to which indexation would be linked to the statutory rates of increase determined in accordance with Act No. 48-1360 of 1 September 1948, unless the initial amount itself was set in accordance with the provisions of said Act and its implementing legislation.

*Amended by Order No. 2009-15 of 8 January 2009 Art. 6 Official Journal of 9 January 2009*

Article L. 112-2. - With regard to company constitutional or contractual provisions, any clause shall be prohibited, where it stipulates that indexation must be linked to the guaranteed minimum wage, to the general level of prices or of wages, or to the price of goods, products, or services, and where it does not directly relate either to the object of the company constitutional documents or contract, or to the business of one of the parties. In order to be deemed to directly relate to the object of a contract with respect to a building, a clause shall stipulate that indexation must be linked to variations in the National Construction Cost Index published by the National Institute of Statistics and Economic Studies or, in the case of commercial activities defined as such by decree, that indexation must be linked to the variations in the Quarterly Commercial Rent Index published under the conditions set forth in said decree by the National Institute of Statistics and Economic Studies.

The provisions of the preceding paragraph shall not apply to company constitutional or contractual provisions relating to maintenance debts.

Life annuities arranged between individuals, including those arranged pursuant to the provisions of Article 759 of the Civil Code, shall be treated as maintenance debts.

*Amended by Act No. 2001-1135 of 3 December 2001 Art. 21 II Official Journal of 4 December 2001*

*Amended by Act No. 2008-776 of 4 August 2008 Art. 47 Official Journal of 5 August 2008*

Article L. 112-3. - As an exception to the provisions of Article L. 112-1 and the first paragraph of Article L. 112-2 and subject to the terms and conditions laid down by decree, the following may be indexed to the general level of prices:

2° *Livret A* savings accounts, as defined in Article L. 221-1

3° *Livret d'Épargne Populaire* savings accounts, as defined in Article L. 221-13

4° *Livret de Développement Durable* savings accounts, as defined in Article L. 221-27

5° home-ownership savings accounts (*comptes d'épargne-logement*), as defined in Article L. 315-1 of the Building and Housing Code

6° *Livret d'Épargne-Entreprise* business savings accounts, as defined in Article 1 of the Economic Initiative Development Act 84-578 of 9 July 1984

7° *Livrets d'Épargne Institués au Profit des Travailleurs Manuels* savings accounts, as defined in Article 80 of the 1977 Budget Act (no. 76-1232 of 29 December 1976)

8° Loans granted to legal entities as well as to individuals for their professional activities.

9° Rents provided for under agreements pertaining to housing units or premises used for commercial activities and that fall within the decree referred to in the first paragraph of Article L. 112-2.

*Amended by Act No. 2004-804 of 9 August 2004 relating to the support for consumption and investment Art. 4 Official Journal of 11 August 2004*

*Amended by Act No. 2005-841 of 26 July 2005 relating to the development of personal services and containing various provisions in support of social cohesion Art. 35 Official Journal of 27 July 2006.*

*Amended by Act No. 2008-776 of 4 August 2008 Art. 40 Official Journal of 5 August 2008*

*Amended by Act No. 2008-776 of 4 August 2008 Art. 145 Official Journal of 5 August 2008*

*Amended by Order No. 2009-15 of 8 January 2009 Art. 6 Official Journal of 9 January 2009*

Article L. 112-3-1. - Notwithstanding any contrary legislative provision, the indexation of the debt instruments and financial contracts respectively referred to under paragraphs II,2 and III of Article L. 211-1 shall be permitted.

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 6 Official Journal of 9 January 2009*

Article L. 112-4. - The guaranteed minimum wage may be indexed according to the rules set forth in Articles L. 3231-4 and L. 3231-5 of the Labour Code.

*Amended by Order No. 2007-329 of 12 March 2007 Art. 12 Official Journal of 13 March 2007*

## Section 2 Settlement of Debts

*Heading amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 13 Official Journal of 7 May 2005*

Article L.112-5. - Where payment is made in banknotes and coins, the debtor shall tender the exact amount.

## Section 3: Cash Settlements Prohibited for Certain Debts

Article L.112-6. - I. - A debt that exceeds the amount established by decree shall not be settled in cash, the debtor's tax residence as well as the professional or non-professional nature of the transaction being taken into account.

Where it exceeds a monthly amount established by decree, the payment of salaries or wages shall be subject to the prohibitions set forth in the preceding paragraph and must be paid either by crossed cheque or credit transfer to a bank or postal account, or to an account held with a payment institution.

Where it exceeds an amount established by decree, any transaction involving the retail purchase of ferrous and non-ferrous metals must be made by crossed cheque, credit transfer to a bank or postal account, or payment card, with the total amount of the transaction not exceeding a ceiling established by decree. Failure to comply with this obligation shall be punishable as a fifth-class offence.

II. - Notwithstanding the provisions in paragraph I, settlements for services rendered that exceed 450 euros shall be made by credit transfer.

III. - The preceding provisions shall not apply where:

a) Settlements are paid by persons that are unable to pay by cheque or by any other means of payment as well as by those that do not hold a deposit account

b) Settlements are paid between individuals that are not acting for professional purposes

c) The settlement is paid for expenditures of the State or of other public entities.

*Replaced by Order No. 2009-104 of 30 January 2009 Art. 1 Official Journal of 31 January 2009*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 2 Official Journal of 16 July 2009*

*Amended by Order No. 2010-788 of 12 July 2010 Art. 203 Official Journal of 13 July 2010*

Article L. 112-7 A debtor that carries out a settlement in violation of the provisions of said Article shall be liable for a fine, the amount of which is determined on the basis of the seriousness of the violations and cannot exceed 5% of the sums settled in breach of the above-mentioned provisions. The debtor and creditor shall be jointly liable for the payment of said fine.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 1 I Official Journal of 22 September 2000*

*Amended by Supplementary Budget Act No. 2001-1276 of 28 December 2001 Art. 51 III Official Journal of 29 December 2001*

*Amended by Act No. 2005-882 of 2 August 2005 Art. 39 Official Journal of 3 August 2005*

*Replaced by Order No. 2009-104 of 31 January 2009 Art. 1 Official Journal of 30 January 2009*

Article L. 112-8. - Deliveries of cereal grains to cooperatives by produce farmers shall be paid for either by cheque or via credit transfer to a credit institution or a payment institution. The cooperatives authorise such institutions to submit the relevant accounting vouchers to the General Inspectorate of Finance and to officials of the National Establishment for Agricultural and Fishery Products (FranceAgriMer).

*Annulé par arrêt n°230461 en date of 4 July 2001.*

*Reinstated by Order No. 2005-429 amending the Monetary and Financial Code Art. 15 Official Journal of 7 May 2005*

*Amended by Act No. 2006-11 of 5 January 2006 Art. 95 III 1° Official Journal of 6 January 2006*

*Amended by Order No. 2006-594 of 23 May 2006 Art. 3 Official Journal of 25 May 2006*

*Repealed by Order No. 2009-104 of 30 January 2009 Art. 1 Official Journal of 31 January 2009*

*Numbering amended by Order No. 2009-104 of 30 January 2009 Art. 1 Official Journal of 31 January 2009 – formerly Article L.112-9 – (the former Article L. 112-8 was repealed)*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 2 Official Journal of 16 July 2009*

## Section 4 Salary Payment Procedure

Article L. 112-10. - Salaries shall be paid as set forth in Article L. 3241-1 of the Labour Code.

*Amended by Order No. 2007-329 of 12 March 2007 Art. 12 Official Journal of 13 March 2007*

## Section 5 Fees or Rebates Granted for the Use of a Given Payment Instrument

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 2 Official Journal of 16 July 2009*

Article L.112-11. - Payment service providers cannot contractually limit a payee from applying fees or offering a rebate to a payer for the use of a given payment instrument. Any stipulation to the contrary shall be null and void.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 2 Official Journal of 16 July 2009*

Article L. 112-12. - Where a payee offers a rebate to a payer for the use of a given payment instrument, the payee shall inform said payer of the rebate prior to undertaking the payment transaction.

A payee may not charge fees for the use of any given payment instrument. Exceptions to said prohibition shall only be authorised under conditions provided for by decree, subject to the approval of the Competition Authorities, considering the need to promote competition and to encourage the use of effective means of payment.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 2 Official Journal of 16 July 2009*

## Chapter III Conversion to the Euro Unit

*Section 1, 2 and 3 eliminated and Art. L. 113-1 to L. 113-6 and L. 113-8 amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 16 Official Journal of 7 May 2005*

Article L.113-1. - Any change, due to the introduction of the euro, to the composition or definition of a variable rate or an index referred to in an agreement shall have no effect on the application of that agreement.

When said variable rate or index disappears as a result of the introduction of the euro, the Minister for the Economy may issue an order designating a substitute variable rate or index.

The parties to the agreement may nevertheless waive application of the rate or index thus designated by mutual agreement.

*Article L. 113-7 becomes Article L. 113-1 by Order No. 2005-429 amending the Monetary and Financial Code Art. 16 Official Journal of 7 May 2005*

## PART I FIDUCIARY MONEY

### Chapter I Metallic money

#### Section 1 Coins

*Section inserted by Act No. 2006-1666 of 21 December 2006 Art. 36 Official Journal of 27 December 2006*

Article L. 121-1. - With the exception of those that are legal tender in France, coins of foreign manufacture shall not be accepted by the public authorities in payment of duties and contributions of any kind that are payable in cash.

Article L. 121-2. - Legal tender coins that may be used for settlement of debts and that are intended for circulation in France are minted by the Monnaie de Paris.

#### Section 2 The Monnaie de Paris

*Section inserted by Act. No. 2006-1666 of 21 December 2006 Art. 36 Official Journal of 27 December 2006*

Article L.121-3. - The Monnaie de Paris is a public industrial and commercial establishment. It is charged with:

1° Exclusive minting, on behalf of the State, of the coins referred to in Article L. 121-2

2° Minting and marketing, on behalf of the State, of French collectors' coins, which are legal tender and may be for settlement of debts

3° Combating the counterfeiting of coins, and with providing expertise and verification, under the conditions provided for in Article L. 162-2

4° Manufacturing and marketing marking instruments, all types of punches for gold, silver and platinum, foreign legal tender coins, foreign collectors' coins and medals

5° Preserving, protecting, restoring and publicly displaying its historic collections, and giving prominence to the historic architectural heritage that it oversees

6° Maintaining, developing and transmitting its artistic and technical know-how; to this end, it may, in addition to its other missions, manufacture and market medallions, tokens, cast items, jewellery and other *objets d'art*.

In order to ensure competitive prices, the Monnaie de Paris may manufacture some or all of the supply of blanks needed for minting coins.

*Inserted by Act No. 2006-1666 of 21 December 2006 Art. 36 Official Journal of 27 December 2006*

Article L.121-4 - The public establishment of the Monnaie de Paris is governed by the provisions of the Public Sector Democratisation Act no. 83-675 of 26 July 1983, which apply to those establishments listed in 1 of Article 1 of the Act.

As an exception to Chapter II of Part II of the aforementioned Act of 26 July 1983, the establishment's personnel shall, for the purposes of electing representatives to the Board of Directors, be divided into several colleges under such conditions as to ensure that all categories of personnel are represented.

As an exception to Article 9 of Act no. 83-634 of 13 July 1983 concerning the rights and obligations of civil servants, and Chapter II of Act 84-16 of 11 January 1984 setting forth provisions relative to the State Civil Service, technical civil servants working within the public establishment of the Monnaie de Paris shall, via those representative institutions stipulated in Parts II and III of Book IV of the Labour Code, take part in the organisation, operation and management of the establishment's action in favour of staff. Adaptations that are justified by the specific situation of these technical civil servants may be introduced by decree issued following consultation with the Conseil d'Etat.

*Inserted by Act No. 2006-1666 of 21 December 2006 Art. 36 Official Journal of 27 December 2006*

Article L.121-5 - The resources of the Monnaie de Paris consist of revenue derived from the activities listed in Article L. 121-3, other revenue in connection with the use of assets that are contributed, donated or acquired, gifts and bequests, as well as debt instrument income and other liabilities.

*Inserted by Act No. 2006-1666 of 21 December 2006 Art. 36 Official Journal of 27 December 2006*

Article L.121-6 - The implementing procedures for the present section are determined by decree issued following consultation with the Conseil d'Etat.

*Inserted by Act No. 2006-1666 of 21 December 2006 Art. 36 Official Journal of 27 December 2006*

## Chapter II: Banknotes

Article L.122-1 - Banknotes that are legal tender are issued as provided for in Article L. 141-5.

On a proposal from the Banque de France, the legal tender status of certain types of banknotes denominated in francs may be abolished by decree. For a period of ten years thereafter, the Banque shall be obliged to exchange them at its branches for other types of banknotes that have legal tender status.

Provisions relating to lost or stolen bearer securities shall not be applicable to banknotes with legal tender status.

## Chapter III Common provisions

*Inserted by Order No. 2005-429 amending the Monetary and Financial Code Art. 17 Official Journal of 7 May 2005*

Article L.123-1 - Banknotes and coins have the benefit of the protection afforded to intellectual works under Articles L. 122-4 and L. 335-2 of the Intellectual Property Code. The issuing authorities hold the copyright thereto.

*Inserted by Order No. 2005-429 amending the Monetary and Financial Code Art. 17 Official Journal of 7 May 2005*

*Amended by rectification in Official Journal No. 299 of 27 December 2006*

# PART III BANK MONEY INSTRUMENTS

## Chapter I Bank cheques and postal cheques

*Heading amended by Act No. 2005-516 of 20 May 2005 relating to the regulation of postal activities Art. 9 a) Official Journal of 21 May 2005*

### Section 1 General Provisions

*Subsection 1 has become Section 1 - Act No. 2005-516 of 20 May 2005 relating to the regulation of postal activities Art. 9 a) Official Journal of 21 May 2005.*

Article L. 131-1. - In the present chapter, the term "banker" shall be used to designate credit institutions, and those institutions, services and persons authorised to keep accounts on which cheques may be drawn.

*Amended by Act No. 2005-516 of 20 May 2005 relating to the regulation of postal activities Art. 9 b) Official Journal of 21 May 2005*

*Replaced by Act No. 2006-387 of 31 March 2006 Art. 26 Official Journal of 1<sup>st</sup> April 2006*

Article L.131-1-1. - The value date of a payment transaction by a cheque denominated in euros may not differ by more than one working day from the date decided upon for its posting to a deposit account.

*Inserted by Act No. 2009-1255 of 19 October 2009 Art. 17 Official Journal of 20 October 2009*

*Amended by Order No. 2010-737 of 1 July 2010 Art. 38 Official Journal of 2 July 2010*

### Section 2 Usage and Form of the Cheque

*Subsection 2 has become Section 2 - Act No. 2005-516 of 20 May 2005 relating to the regulation of postal activities Art. 9 a) Official Journal of 21 May 2005.*

Article L. 131-2. - The cheque shall bear:

1. The word "cheque" inserted into the text of the instrument and expressed in the language used for the wording of that instrument

2. The explicit instruction to pay a given sum

3. The name of the person or entity that must pay, known as the drawee

4. An indication of the place where the payment must take place

5. An indication of the date and the place where the cheque is drawn

6. The signature of the person issuing the cheque, known as the drawer

Article L. 131-3. - An instrument from which any statement indicated in Article L. 131-2 is omitted shall not constitute a cheque, save in the cases set forth in the following paragraphs.

In the absence of any special indication, the place indicated next to the name of the drawee shall be deemed to be the place of payment. If several places are indicated next to the name of the drawee, the cheque shall be payable at the first place indicated.

In the absence of these indications or any other indication whatsoever, the cheque shall be payable at the place where the drawee has its principal place of business.

A cheque with no indication as to where it was drawn shall be deemed to have been drawn at the place indicated next to the name of the drawer.

Article L. 131-4. - A cheque may only be drawn on a credit institution, an investment service provider, the Trésor Public, the Caisse des Dépôts et Consignations or the Banque de France. At the time the cheque is drawn, the drawee must have made funds available to the drawer, in compliance with an express or tacit agreement that entitles the drawer to dispose of those funds by means of a cheque.

Due cover must be provided by the drawer or by the person on whose behalf the cheque is drawn; a drawer acting on behalf of another shall remain personally liable only in regard to the endorsers and the bearer.

If the cheque is returned unpaid, the drawer alone shall be required to prove that the account on which it was drawn was sufficiently in funds at the time of drawing; failing this, he is required to guarantee it, even if the protest for non-payment is made after expiry of the time limit imposed.

Instruments in the form of cheques drawn and payable in France from any person whatsoever other than those referred to in the first paragraph of the present Article are not valid as cheques.

Article L. 131-5. - A cheque cannot be formally accepted. An acknowledgement of acceptance written on a cheque shall be deemed to be omitted.

The drawee is nevertheless entitled to countersign the cheque; a countersignature has the effect of certifying the existence of the necessary cover on the date on which it was affixed.

Article L. 131-6. - A cheque may be made payable to:

- A designated person, with or without an express "to the order of" clause

- A designated person, with a "not to the order of" clause or an equivalent clause

- The bearer.

A cheque payable to a designated person, with the indication "or to the bearer" or an equivalent wording, shall be treated as a bearer cheque.

A cheque with no indication of the payee shall be treated as a bearer cheque.

Article L.131-7. - A cheque may be made out to the order of the drawer.

A cheque may be drawn on behalf of a third party.

A cheque cannot be drawn on the drawer itself, save for a cheque drawn between different institutions holding accounts belonging to a single drawer, and provided that the cheque is not a bearer cheque.

Article L. 131-8. - Any stipulation of interest inserted in the cheque shall be deemed to be omitted.

Article L. 131-9 A cheque may be payable at the place of residence of a third party, either where the drawee is domiciled or in a different locality, provided that the third party is a banker or a Postal Cheque Centre.

In addition, such domiciliation cannot take place against the bearer's will, unless the cheque is crossed and the domiciliation is at the Banque de France of the same place.

Article L. 131-10. - In the event of the words and figures differing on a cheque whose amount is written fully in both letters and figures, that cheque shall be valid only for the sum written fully in letters.

In the event of the words and figures differing on a cheque whose amount is written several times, either fully in letters or in figures, that cheque shall be valid only for the lowest sum.

Article L.131-11. - If a cheque bears the signatures of persons lacking the capacity to issue cheques, false signatures or signatures of fictitious persons, or signatures that, for any reason whatsoever, do not bind the persons who signed the cheque, or on behalf of whom it was signed, the obligations of the other signatories remain valid.

Article L.131-12 - Whoever signs a cheque as a representative of a person on behalf of whom he was not empowered to act is himself bound by the cheque and, if he has paid, enjoys the same rights as the supposed principal. The same applies to a representative who has exceeded his powers.

Article L.131-13 - The drawer is the guarantor of payment. Any clause through which the drawer seeks to release himself from this guarantee shall be deemed to be omitted.

Article L.131-14 - At the request of either the drawer or the bearer, any cheque for which the corresponding cover is available to the drawer must be certified by the drawee, except where the drawee exercises the right to replace that cheque with a cheque issued under the conditions set forth in the third paragraph of Article L. 131-7.

The cover for a certified cheque shall be frozen in favour of the bearer until expiry of the period of validity stipulated in Article L. 131-32, with the drawee assuming liability in relation thereto.

Article L.131-15. - Whoever submits a cheque for payment must prove his identity by means of an official document that bears his photograph.

## Section 3 Transfer

*Subsection 3 has become Section 3 - Act No. 2005-516 of 20 May 2005 relating to the regulation of postal activities Art. 9 a) Official Journal of 21 May 2005.*

Article L.131-16 - A cheque stipulated as payable to a designated person, with or without the express clause "to order", may transferable by means of endorsement.

A cheque stipulated as payable to a designated person, in which the words "not to order" or any equivalent expression have been inserted, can only be transferred according to the form and with the effects of an ordinary assignment.

Article L. 131-17 - A cheque may even be endorsed to the drawer or any other party to the cheque. These persons may re-endorse the cheque.

Article L.131-18 The endorsement must be unconditional. Any condition to which it is made subject shall be deemed to be omitted.

A partial endorsement is null and void.

An endorsement by the drawee is also null and void.

An endorsement to the bearer is equivalent to a blank endorsement.

An endorsement to the drawee is valid only as a receipt, unless the drawee has several establishments and the endorsement is made in favour of an institution other than that on which the cheque has been drawn.

Article L.131-19 - An endorsement must be written on the cheque or on a slip attached thereto (*allonge*). It must be signed by the endorser, whose signature shall appended either by hand or by any non-manual process.

may leave the beneficiary unspecified or may consist simply of the signature of the endorser (blank endorsement). In the latter case, the endorsement, to be valid, must be written on the back of the cheque or on the slip attached thereto (*allonge*).

Article L. 131-20. - An endorsement transfers all the rights arising out of a cheque, including ownership of the cover.

If the endorsement is blank, the bearer may:

1. Fill in the blank space with his own name or that of another person
2. Re-endorse the cheque in blank, or to another person
3. Transfer the cheque to a third party, without filling in the blank space and without endorsing it

Article L.131-21 - In the absence of any contrary stipulation, the endorser shall guarantee payment.

He may prohibit any further endorsement; in this case, he has no liability as guarantor to the persons to whom the cheque is subsequently endorsed.



Article L. 131-22 - The holder of an endorsable cheque is deemed to be the lawful bearer if he establishes his title to the check through an uninterrupted series of endorsements, even if the last endorsement is blank. Struck-out endorsements shall, in this respect, be deemed to be omitted. When a blank endorsement is followed by another endorsement, the person who signed this last endorsement shall be deemed to have acquired the cheque via the blank endorsement.

Article L. 131-23 - An endorsement on a bearer cheque renders the endorser liable in accordance with the provisions governing the right of recourse; it does not, however, convert the instrument into an order cheque.

Article L. 131-24 - If a person has been dispossessed of an order cheque in any manner whatsoever, a payee who establishes his right in the manner indicated in Article L. 131-22, shall only be required to relinquish the cheque if he acquired it in bad faith, or if, by acquiring it, he was guilty of gross misconduct.

Article L. 131-25 - Persons who are sued in connection with a cheque cannot raise objections against the bearer founded on their personal relationship with the drawer or with the previous bearers, unless the bearer knowingly acted to the detriment of the debtor in acquiring the cheque.

Article L. 131-26 - When an endorsement contains the words "value in collection" (*valeur en recouvrement*), "for collection" (*pour encaissement*), "by procuration" (*par procuration*), or any other phrase implying a simple mandate, the bearer may exercise all the rights arising out of the cheque but may only endorse it as a proxy.

In this case, the parties liable may raise against the bearer only those objections that may be invoked against the endorser.

A mandate contained in an endorsement by procuration does not terminate by reason of the death or incapacity of the party giving the mandate.

Article L. 131-27 - An endorsement made after protest or after expiration of the time-limit for presentment operates only as an ordinary assignment.

In the absence of proof to the contrary, an undated endorsement shall be presumed to have been made prior to the protest or the expiration of the time-limit for presentment.

Backdating of orders is prohibited, under pain of them being declared forgeries.

## Section 4 Avals

*Subsection 4 has become Section 4 - Act No. 2005-516 of 20 May 2005 relating to the regulation of postal activities Art. 9 a) Official Journal of 21 May 2005.*

Article L. 131-28. - Payment of part or all of a cheque's value may be guaranteed by an aval.

Such a guarantee is provided by a third party, excluding the drawee, and even by a signatory of the cheque.

Article L. 131-29. - The aval is given on the cheque or on an *allonge*, or via a separate document indicating the place where it was provided.

It is expressed by the words "good as aval" or by any other equivalent expression; it is signed by the giver of the aval.

It is deemed to be constituted by the mere signature of the giver of the aval, placed on the face of the cheque, except in cases where the drawer has signed.

The aval must indicate on whose behalf it is given. In the absence of such an indication, it is deemed to be given for the drawer.

Article L. 131-30. - The giver of the aval is bound in the same way as the person for whom he is standing guarantor.

His commitment is valid, even when the liability he has guaranteed proves to be null and void for any reason, other than defect of form.

When he pays the cheque, the issuer of the aval acquires the rights arising out of the cheque against the person guaranteed and against those who are liable to the latter by virtue of the cheque.

## Section 5 Presentation and Payment

*Subsection 5 has become Section 5- Act No. 2005-516 of 20 May 2005 relating to the regulation of postal activities Art. 9 a) Official Journal of 21 May 2005.*

Article L. 131-31. - A cheque is payable at sight. Any contrary stipulation shall be deemed to be omitted.

A cheque presented for payment before the day indicated as its date of issue is payable on the day of presentment.

Article L. 131-32. - A cheque issued and payable in Metropolitan France must be presented for payment within one week.

A cheque issued outside Metropolitan France and payable in Metropolitan France must be presented within either twenty days or seventy days, depending on whether the place of issue is in Europe or outside Europe.

For the purposes of the preceding paragraph, cheques issued in a country which borders the Mediterranean are deemed to be issued in Europe.

The date from which the time-periods mentioned in the second paragraph shall begin to run shall be the day shown on the cheque as the date of issue.

Article L. 131-33. - When a cheque payable in France is issued in a country which uses a calendar other than the Gregorian calendar, the corresponding day of the Gregorian calendar shall be deemed to be the day of issue.

Article L. 131-34. - Presentment of a cheque to a clearing house is equivalent to presentment for payment.

Article L. 131-35. - The drawee must pay even after expiration of the time-limit for presentment. He must also pay even if the cheque was issued in breach of the order contained in

Article L. 131-73 or the prohibition provided for in the second paragraph of Article L. 163-6.

A stop may only be placed on a cheque payment in the event of a cheque being lost, stolen or used fraudulently, or if the bearer is placed in judicial reorganisation or liquidation. The drawer must immediately confirm the stop in writing by any means whatsoever.

All banks must inform their accountholders in writing of the penalties incurred in the event of a stop being founded on a cause other than those provided for in the present Article.

If, despite this defence, the drawer applies a stop for other reasons, the urgent applications judge must order the lifting of the stop at the bearer's request, even if main proceedings have been initiated.

*Amended by Act No. 2005-845 of 26 July 2005 Art. 165 and 174 I Official Journal of 27 July 2005*

Article L. 131-36. - Neither the death nor the incapacity of the drawer, arising after the cheque is issued, shall impede the effects of the cheque.

Article L. 131-37. - The drawee may demand, on paying the cheque, that it be returned to him duly receipted by the bearer.

The bearer may not refuse partial payment.

If the cover is less than the amount of the cheque, the bearer is entitled to demand payment up to the full amount of the cover.

In case of partial payment, the drawee may require that the payment be noted on the cheque and that a receipt be given to him.

This receipt, issued as a separate document, enjoys the same dispensation from stamp duty as a receipt given on the cheque itself.

Partial payments against the amount of a cheque shall relieve the drawer and the endorsers of liability.

The bearer is required to have the cheque protested for the surplus.

Article L. 131-38. - He who pays a cheque without a stop is deemed to be validly discharged.

The drawee who pays an endorsable cheque is bound to verify the validity of the series of endorsements, but not the signature of the endorsers.

Article L. 131-39. - When it is stipulated that a cheque is payable in a currency which is not legal tender in France, its value may be paid, within the time-limit for presentment, at its exchange value in euros on the day of payment. If payment was not effected upon presentment, the bearer may, at his discretion, request that the amount of the cheque be paid in a currency that is legal tender in France and at the exchange rate applicable on the day of presentment or on the day of payment.

French practices for determining the exchange rates applicable to foreign currencies in which cheques are drawn must be followed in order to determine the value of those currencies in a currency that is legal tender in France. The drawer may nevertheless stipulate that the sum payable is to be calculated on the basis of a rate specified on the cheque.

The foregoing rules do not apply in cases where the drawer has stipulated that payment be made in a foreign currency.

If the amount of the cheque is indicated in a currency having the same denomination but a different value in the country of issue and the country of payment, reference is deemed to be made to the currency of the place of payment.

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 18 Official Journal of 7 May 2005*

Article L. 131-40. - In the event of a cheque being lost, the person to whom it belongs may pursue payment thereof via a second, third or fourth cheque, etc.

If the person who lost the cheque is unable to represent the second, third or fourth cheque, etc., he may apply for and obtain payment of the lost cheque via a court order subject to proving his title thereto through his accounting records and standing surety.

All provisions of the present section having to do with loss of a cheque shall apply equally to theft of a cheque.

*Amended by Act No. 2005-516 of 20 May 2005 relating to the regulation of postal activities Art. 9 c) Official Journal of 21 May 2005*

Article L. 131-41. - If the payment applied for under the provisions of Article L. 131-40 is refused, the owner of the lost cheque may secure all of his rights via a protest for non-acceptance. This protest must be made, at the latest, on the first business day following expiration of the time-limit for presentment. The notices referred to in Article L. 131-49 must be served on the drawer and the endorsers within the time limits laid down in that Article.

Article L. 131-42. - In order to obtain a second cheque, the owner of a lost cheque must contact his immediate endorser, who is bound to use his name and his best efforts when dealing with his own endorser, and thus progress from endorser to endorser back to the drawer of the cheque. The owner of the lost cheque shall bear the costs.

Article L. 131-43. - The surety commitment referred to in Article L. 131-40 shall expire after six months if, during that period, no application has been made and no proceedings have been initiated.

## Section 6 Crossed Cheques

*Subsection 6 has become Section 6- Act No. 2005-516 of 20 May 2005 relating to the regulation of postal activities Art. 9 a) Official Journal of 21 May 2005.*

Article L. 131-44. - The drawer or bearer of a cheque may cross it with the effects set out in the following Article.

A crossing takes the form of two parallel lines drawn on the face of the cheque. A crossing may be general or special.

A crossing is general if it consists of the two lines only or if the term "banker" or an equivalent appears between the lines; it is special if the name of a banker is written between the lines.

A general crossing may be converted into a special crossing, but a special crossing may not be converted into a general crossing.

Any striking out of the crossing or the designated banker's name shall be deemed not to have been made.



Article L. 131-45. - A check crossed generally may be paid by the drawee only to a banker, a payment institution, the head of a Postal Cheque Centre or a customer of the drawee.

A check crossed specially may be paid by the drawee only to the designated banker or payment institution or, if the banker is the drawee, to his customer. The designated banker or payment institution may nevertheless encash the cheque with another banker.

A banker or a payment institution may acquire a crossed cheque only from one of its customers, the head of a Postal Cheque Centre or another banker or payment institution. It may not encash it on behalf of any other person or entity.

A cheque bearing several special crossings may only be paid by the drawee if there are two crossings, one of which is for encashment by a clearinghouse.

A drawee, banker or payment institution that fails to comply with the above provisions is liable for any resulting damage up to the amount of the cheque.

*Amended by Order No. 2009-866 of 15 July 2009 Art. 1 Official Journal of 16 July 2009*

Article L. 131-46. - Deposit-only cheques issued abroad that are payable in France are treated as crossed cheques.

## Section 7 Recourse in the Case of Non-Payment

*Subsection 7 has become Section 7- Act No. 2005-516 of 20 May 2005 relating to the regulation of postal activities Art. 9 a) Official Journal of 21 May 2005.*

Article L. 131-47. - If a cheque presented in good time is not paid, and if the refusal to pay is recorded in a authenticated instrument known as a protest, the bearer may exercise his recourse against the endorsers, the drawer and the other liable parties.

Article L. 131-48. - The protest must be drawn up within the time-limit for presentment.

If the cheque is presented on the last day of the time-limit, the protest may be drawn up on the next business day.

Article L. 131-49. - The bearer must give notice of the non-payment to his endorser and to the drawer within four business days following the day on which the protest is drawn up and, if a cost-free return clause applies, on the day of presentment.

Where the cheque indicates the drawer's name and domicile, notaries and bailiffs shall be bound, on penalty of damages, to notify the drawer, by registered letter and within forty-eight hours of registration, of the reasons for the refusal to pay. The notary or bailiff charges a fee for this notification.

Each endorser must, within two business days following the day he receives notice, inform his endorser of the notice he has received, indicating the names and addresses of those who gave the earlier notices, and so on, until the drawer is reached. The time limits indicated above run from the receipt of the preceding notice.

Where, pursuant to the previous paragraph, notice is given to a person who has signed a cheque, the same notice must be given to his avalist within the same time limit.

Where an endorser has not indicated his address or has indicated it in an illegible manner, it is sufficient that notice is given to the endorser preceding him.

The person who must give notice may do so in any form whatsoever, including by simply returning the cheque.

He must prove that he served notice within the prescribed time limit. The time limit is deemed to be observed if the letter giving notice is posted within the same time limit.

He who fails to serve notice within the time limit indicated shall not forfeit his rights; he is liable for the damage, if any, caused by his negligence, but the damages shall not exceed the amount of the cheque.

Article L. 131-50. - By writing the words "return without charge", "without protest" or any equivalent wording on the instrument and signing it, the drawer, an endorser or an avalist may release the bearer from drawing up a protest in order to exercise his right of recourse.

This wording does not exempt the bearer from presenting the cheque within the prescribed time limit or from giving the requisite notices. The burden of proving non-observance of the time limit rests with the person who raises it against the bearer.

If such wording is used by the drawer, it is binding on all the signatories; if it is used by an endorser or avalist, it is binding on that person only. If the bearer issues a protest despite the wording used by the drawer, the costs thereof shall be borne by him. When the wording is used by an endorser or avalist, the costs of any protest issued may be recovered from all the signatories.

Article L. 131-51. - All the persons liable by virtue of a cheque are jointly and severally bound to the bearer.

The bearer has the right to proceed against all such persons, individually or collectively, without being compelled to follow the order in which they are liable.

The same right is enjoyed by any signatory of a cheque who has paid the cheque.

Proceedings against one of those liable does not prevent proceedings against the others, including those subsequent to the party initially proceeded against.

Article L. 131-52. - The bearer may claim the following from the person against whom he exercises his right of recourse:

1. The amount of the unpaid cheque
2. Interest with effect from the day of presentment at the legal rate applicable in France
3. The costs of the protest and notices given, as well as other costs

Article L. 131-53. - The person who has redeemed the cheque is entitled to claim the following from the parties liable to him:

1. The total sum he has paid
2. Interest on the said sum, with effect from the day on which he made payment, calculated at the legal rate applicable in France
3. Any costs he incurred

Article L. 131-54. - Any liable party against whom a right of recourse is exercised or who is exposed to a right of recourse may demand, against payment, the return of the cheque with the protest and a receipt.

Any endorser who has paid a cheque may strike out his endorsement and those of subsequent endorsers.

Article L. 131-55. - Where presentment of the cheque or drawing up of the protest within the prescribed time limit is prevented by an insurmountable obstacle such as a statutory requirement or other instance of force majeure, the time limits shall be extended.

The bearer is required to notify his endorser of the instance of force majeure without delay and to affix a dated and signed reference to such notification on the cheque or on an *allonge*; moreover, the provisions of Article L. 131-49 shall be applicable.

The bearer must present the cheque for payment as soon as the state of force majeure has ceased and, if applicable, have the protest drawn up.

If force majeure continues beyond fifteen days after the date on which the bearer, even before the expiration of the time-limit for presentment, has given notice of force majeure to his endorser, recourse may be exercised without any need for presentment or protest, unless these rights of recourse are suspended for a longer period, pursuant to Article L. 511-61 of the Commercial Code.

Facts that are purely personal to the bearer or to the person he has entrusted with presentment of the cheque or the drawing-up of the protest are not deemed to constitute instances of force majeure.

## Section 8 Cheques drawn in Multiple Originals

*Subsection 8 has become Section 8- Act No. 2005-516 of 20 May 2005 relating to the regulation of postal activities Art. 9 a) Official Journal of 21 May 2005.*

Article L. 131-56. - With the exception of bearer cheques, any cheque issued in one country and payable in another country or in an overseas territory of that same country and *vice versa*, or issued and payable in the same territory or in various overseas territories of the same country, may be drawn in identical multiple originals. When a cheque is drawn in multiple originals, those originals must be numbered in the text of the instrument itself, failing which each of them is deemed to be a separate cheque.

Article L. 131-57. - Payment of one original constitutes full and final settlement, even if it there is no stipulation that such payment shall render the other originals of no effect.

An endorser who has transmitted originals to different persons, and endorsers subsequent to him, are all bound in relation to all originals bearing their signature which have not been returned.

## Section 9 Alterations

*Subsection 9 has become Section 9- Act No. 2005-516 of 20 May 2005 relating to the regulation of postal activities Art. 9 a) Official Journal of 21 May 2005.*

Article L. 131-58. - Where the text of a cheque has been altered, the signatories subsequent to such alteration shall be bound by the terms of the amended text; the previous signatories shall be bound by the terms of the original text.

## Section 10 Statutory Limitations

*Subsection 10 has become Section 10- Act No. 2005-516 of 20 May 2005 relating to the regulation of postal activities Art. 9 a) Official Journal of 21 May 2005.*

Article L. 131-59. - Actions of recourse brought by the bearer against the endorsers, the drawer and the other liable parties shall be barred six months after expiration of the time limit for presentment.

Actions of recourse brought between the various parties liable for the payment of a cheque shall be barred six months after the day on which the party liable paid the cheque or the day on which he himself was sued. An action brought by the bearer of the cheque against the drawee shall be barred one year after expiration of the time-limit for presentment.

In the event of forfeiture or expiration of the time-limit, however, there remains a right to bring an action against a drawer who has not provided the requisite cover or against any parties liable who have unjustly benefited from enrichment.

Article L. 131-60. - In the event of proceedings being initiated, the time-limit shall be determined based on the date of the last proceedings brought. This shall not apply if a court decision has been handed down or if the debt has been acknowledged in a separate document.

Interruption of a time-limit shall be effective only against the person in respect of whom it is obtained.

Alleged debtors are nevertheless bound, if so requested, to formally swear that they, and likewise their widows, heirs or assigns, are no longer liable and that they believe in good faith that they are no longer indebted in any way.

## Section 11 Protests

*Subsection 11 has become Section 11- Act No. 2005-516 of 20 May 2005 relating to the regulation of postal activities Art. 9 a) Official Journal of 21 May 2005.*

Article L. 131-61. - The protest must be executed by a notary or a bailiff at the domicile of the person on whom the cheque was payable, or his last known domicile. Where a false indication of domicile is given, the protest shall be preceded by a search of the premises.

Article L. 131-62. - The deed of protest shall contain a literal transcription of the cheque and the endorsements, as well as a demand for payment of the amount of the cheque. It states whether the person who must pay was present or absent, the reasons for the refusal to pay and the inability or refusal to sign and, if partial payment has been made, the amount thereof.

Notaries and bailiffs are required, under pain of damages, to make a signed and dated reference to the protest on the cheque.

Article L. 131-63. - No deed emanating from the bearer of the cheque may be substituted for the deed of protest, except in the case provided for in Articles L. 131-40 to L. 131-43 with respect to loss of the cheque.

Article L. 131-64. - Notaries and bailiffs shall be bound, under pain of dismissal, costs, and damages to be paid to the parties, to leave an exact copy of the protests. Under pain of the same penalties, they shall also be required to file two exact copies of the protests with the registrar of the Commercial Court or Tribunal de Grande Instance ruling in a commercial capacity in the debtor's place of domicile and obtain a receipt therefor, or to send two exact copies of the protests thereto by registered letter with a request for acknowledgement of receipt, one of these being for the Public Prosecutor's Office; this formality must be completed within two weeks of service.

Article L. 131-65. - The provisions of Articles L. 511-56 to L. 511-61 of the Commercial Code shall apply to protests issued for failure to pay a cheque.

Article L. 131-66. - No legal or judicial extension of the time limit is allowed, save for the cases referred to in Article L. 511-61 of the Commercial Code.

Article L. 131-67. - The submission of a cheque in payment which is accepted by a creditor does not entail novation. Consequently, the original debt, with all the guarantees attached thereto, subsists until the cheque is paid.

Article L. 131-68. - Regardless of the formalities applicable to action to enforce a guarantee, the bearer of a protested cheque may, having obtained the judge's permission to do so, effect protective seizure of the endorser's household effects.

## Section 12 Non-Payment and Penalties

*Subsection 12 has become Section 12- Act No. 2005-516 of 20 May 2005 relating to the regulation of postal activities Art. 9 a) Official Journal of 21 May 2005.*

Article L. 131-69. - A drawer who issues a cheque that does not bear an indication of the place of issue or that is undated, who affixes a false date thereto, or who draws a cheque on a person other than a banker, is subject to a maximum fine of 6% of the value of the cheque. This fine shall not be less than 0.75 euro.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

Article L. 131-70. - Any banker who issues blank cheque forms to his creditors that are payable at his counters must, under pain of a fine of 7.5 euros per offence, indicate on each form the name of the person to whom that form is issued.

Any banker who refuses to pay a cheque correctly presented at one of his counters with adequate cover and no stop placed on it shall be held liable for any resultant damage suffered by the drawer in regard to both non-fulfilment of his instruction and injury to his reputation.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

Article L. 131-71. - Any banker may, on the basis of a reasoned decision, refuse to issue an accountholder with cheque forms other than those which the drawer uses to withdraw funds

from the drawee or for certification. He may, at any time, request that forms previously issued be returned. Such return must be requested upon closure of the account.

Where issued, cheque forms are made available to the accountholder free of charge.

Pre-crossed cheque forms may be issued with an express declaration from the banker that renders them untransferable by endorsement other than for the benefit of a credit institution or similar establishment, or a payment institution. The tax authorities may, at any time, request communication of the identity of the persons to whom forms that do not meet this specification are issued, along with the numbers of those forms.

The cheque forms shall indicate the telephone number of the bank branch or agency at which the cheque is payable.

They shall also indicate the accountholder's address.

*Amended by Order No. 2009-866 of 15 July 2009 Art. 1 Official Journal of 16 July 2009*

Article L. 131-72. - Cheque forms other than those which the drawer uses to withdraw funds from the drawee or for certification cannot, without prejudice to the provisions of Article L. 131-78 and as provided in that Article, be issued to the accountholder or his representative if an instance of non-payment has been recorded against the accountholder owing to lack of adequate cover, unless the accountholder has discharged his obligations under the second, third, fourth, fifth and sixth paragraphs of Article L. 131-73.

The provisions of the present Article must be respected by any banker who has refused payment of a cheque on account of inadequate cover and by any banker who has been informed of an instance of non-payment by the Banque de France pursuant to Article L. 131-85.

*Amended by Order No. 2010-737 of 1 July 2010 Art. 36 Official Journal of 2 July 2010*

Article L. 131-73. - Subject to the provisions in Article L. 312-1 concerning the right to hold an account and obtain basic banking services, the drawee banker may, having informed the accountholder of the consequences of the lack of cover by any appropriate and available means, refuse payment of a cheque on account of inadequate cover. He must instruct the accountholder to return the cheque forms in his and his representatives' possession to all the bankers with whom he holds an account and to issue no further cheques other than those that only allow withdrawal of funds from the drawee by the drawer or those that are certified. The drawee banker shall inform its customer's representatives thereof at the same time.

The accountholder nevertheless recovers the right to issue cheques when, subsequent to receipt of such an instruction following an instance of non-payment, he can show that he has paid the amount of the unpaid cheque or provided adequate and available cover for payment thereof through the good offices of the drawee.

A certificate of non-payment is issued at the bearer's request after a period of thirty days has elapsed since the first presentation of an unpaid cheque if it was not paid upon its second presentation or if no cover has been provided to enable it to be paid within that same period. The said certificate is issued by the drawee if a further presentation proves to be fruitless after thirty days.

Effective notification or, failing that, service of the certificate of non-payment on the drawer by a bailiff, shall constitute an order to pay.

A bailiff who has not received proof of payment of the amount of the cheque and the fees within fifteen days of receipt of notification or service shall issue, without any other formalities or fees, an enforceable instrument.

In any event, all fees occasioned by the rejection of a cheque without cover shall be paid by the drawer. The fees received by the drawee may not exceed an amount established by decree.

*Amended by Order No. 2000-1223 of 14 December 2000, rectification*

*Amended by Act No. 2001-1168 of 11 December 2001 Art. 15 I 1° and 2° Official Journal of 12 December 2001*

*Amended by Act No. 2007-290 of 5 March 2007 Art. 70 Official Journal of 6 March 2007*

*Amended by Order No. 2010-737 of 1 July 2010 Art. 36 Official Journal of 2 July 2010*

Article L. 131-74. - Any payment made by the drawer into the account on which the unpaid cheque was drawn is shall be assigned prioritarly to the creation of cover for full payment thereof.

Articles L. 131-75, 76 and 77

*Repealed by Order No. 2010-737 of 1 July 2010 Art. 36 Official Journal of 2 July 2010*

Article L. 131-78. An accountholder who has been instructed not to issue cheques recovers that right as soon as he has regularised his situation as provided for in Article L. 131-73. If he has not done so, he does not recover the right to issue cheques until a period of five years has elapsed since the date of the instruction.

*Amended by Act No. 2001-420 of 15 May 2001 Art. 23 I Official Journal of 16 May 2001*

*Amended by Order No. 2010-737 of 1 July 2010 Art. 36 Official Journal of 2 July 2010*

Article L. 131-79. - Disputes relating to the prohibition on issuing cheques shall be brought before the civil courts.

A legal action brought before the civil courts shall not have suspensory effect. Nevertheless, in the event of a serious challenge, the court to which the matter is referred may, even in summary proceedings, order the suspension of the prohibition on issuing cheques.

*Amended by Order No. 2010-737 of 1 July 2010 Art. 36 Official Journal of 2 July 2010*

Article L. 131-80. - If a holder of a joint account, with or without joint and several liability, is responsible for the non-payment, the provisions of Articles L. 131-72 and L. 131-73 apply automatically to the holder who has been designated for that purpose by mutual agreement in relation to that account and any other accounts he holds individually. They also apply to the other holders in relation to that account.

If a cheque is rejected on account of inadequate cover and the drawee notes that no accountholder has been designated as indicated in the previous paragraph, the provisions of Articles L. 131-72 and L. 131-73 automatically apply to all the accountholders, both for that account and for any other accounts they might hold individually.

Article L. 131-81. - Notwithstanding the absence, inadequacy or unavailability of cover, the drawee must pay any cheque:

1. Drawn on a form of which he failed to secure return as provided for in Article L. 131-73, unless he can show that he implemented the measures referred to in that Article.

2. Drawn on a form which he issued in breach of the provisions of Article L. 131-72 and of the third paragraph of Article L. 163-6, or on a form he issued to a new customer who was at that time the subject of a judgement founded on the second paragraph of Article L. 163-6 or a prohibition imposed pursuant to the first paragraph of Article L. 131-73 and whose name was therefore included in the Banque de France's central file of unpaid cheques.

II. - A drawee who refuses to pay a cheque drawn on a form covered in I is jointly and severally liable to pay the compensation awarded to the bearer on account of the non-payment, as well as a sum equal to the amount of the cheque.

A drawee who has refused to pay a cheque must be able to show that it complied with the legal and regulatory prescriptions relating to the opening of an account and the issuing of cheque forms, as well as the legal and regulatory obligations deriving from non-clearance, including the instruction to return cheque forms.

Article L. 131-82. - Notwithstanding the absence, inadequacy or unavailability of cover, the drawee must pay any cheque in an amount equal to or below 15 euros drawn on a form he has issued, given that, in such cases, the accountholder and the drawee are deemed by law to have entered, upon issuance of the form, into an agreement establishing an irrevocable credit.

The drawee's obligation deriving from the provisions of the present Article is not subject to the statutory period in Article L. 131-59; it expires one month after the date of issuance of the cheque. It does not apply to the drawee bank if it is unable on not under obligation to pay a cheque for any reason other than absence or inadequacy of cover.

The provisions of the present Article are a matter of public policy.

*Amended by Supplementary Budget Act No. 2001-1276 of 28 December 2001 Art. 51 III Official Journal of 29 December 2001*

Article L. 131-83. - With the exception of the case envisaged in the first paragraph of II of Article L. 131-81, a drawee who has paid a cheque despite the absence, inadequacy or unavailability of cover is subrogated in the rights of the bearer up to the amount of the sum it advanced; it may, to that end, have the absence or inadequacy of the cover formally recorded in an instrument drawn up in the form of a protest.

Failing any automatic direct debit from the account and without prejudice to any other legal remedy, it may have a bailiff serve a formal demand on the accountholder to pay it the sum due to it pursuant to the previous paragraph.

Article L. 131-84. - A drawee who has refused to pay a cheque because of inadequate cover or has closed an account on which cheque forms have been issued or on which a stop has been placed on account of cheques or cheque forms being lost or stolen shall inform the Banque de France thereof.

Article L. 131-85. - The Banque de France informs the institutions and other entities on which cheques may be drawn, the institutions set forth in 5 of Article 511-6 and payment institutions of instances of uncleared cheques, prohibitions imposed pursuant to Article L. 163-6, and the lifting of bans on the issuing of cheques; it also informs the Public Prosecutor thereof, if so requested.

Only the Banque de France holds centralised records of the data referred to in the previous paragraph.

For the purposes of the first paragraph, the tax authorities shall send the Banque de France information they hold pursuant



to Article 1649 A of the General Tax Code. This information allows the Banque to identify all accounts opened by the natural persons and legal entities referred to in Article L. 131-72 and in the second paragraph of Article L. 163-36 on which cheques may be drawn. The tax authorities also send, solely for the purposes of the present section, the information required to identify the holders of those accounts.

It also sends the Public Prosecutor information concerning the offences penalised by the third and fourth paragraphs of Article L. 163-2 and the first and second paragraphs of Article L. 163-7.

The provisions of Article L. 163-11 do not prevent credit institutions, the organisations listed in 5 of Article L. 511-6 and payment institutions from using this information as an element of assessment before granting a loan or opening a line of credit.

*Amended by Act No. 2005-516 of 20 May 2005 relating to the regulation of postal activities Art. 9 b) Official Journal of 21 May 2005*

*Amended by Act No. 2008-776 of 4 August 2008 Art. 81 Official Journal of 5 August 2008*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 1 Official Journal of 16 July 2009*

Article L. 131-86. - The Banque de France provides information to any person who wishes to verify the validity, in regard to the present section, of a cheque tendered in payment of goods or services. The sources of such requests for information are recorded.

*Amended by Act No. 2005-516 of 20 May 2005 relating to the regulation of postal activities Art. 9 c) Official Journal of 21 May 2005*

Article L. 131-87. - The present chapter's implementing measures are, as needed, determined in a decree issued following consultation with the Conseil d'Etat. That decree determines, inter alia, the manner in which the instruction is conveyed to the accountholder and clarifies his rights and obligations and what he must do to regularise his situation. It also determines how the Banque de France meets the obligations incumbent on it pursuant to Articles L. 131-85 and L. 131-86.

*Amended by Act No. 2005-516 of 20 May 2005 relating to the regulation of postal activities Art. 9 c) Official Journal of 21 May 2005*

## Section 2 Giro cheques

*Abrogée par la Act No. 2005-516 of 20 May 2005 relating to the regulation of postal activities Art. 16 IV<sup>8°</sup> Official Journal of 21 May 2005*

Article L.131-88.

*Abrogé par la Act No. 2005-516 of 20 May 2005 relating to the regulation of postal activities Art. 16 IV<sup>8°</sup> Official Journal of 21 May 2005*

## Chapter II Letters of Exchange and Promissory Notes

*Relocated by Order No. 2009-866 of 15 July 2009 Art. 1 IV<sup>1</sup> Official Journal of 16 July 2009*

Article L. 132-1. - Letters of exchange are governed by Articles L. 511-1 to L. 511-81 of the Commercial Code.

*Relocated by Order No. 2009-866 of 15 July 2009 Art. 1 IV<sup>1</sup> Official Journal of 16 July 2009 (formerly Article L. 134-1)*

Article L. 132-2. - Promissory notes are governed by Articles L. 512-1 to L. 512-8 of the Commercial Code.

*Relocated by Order No. 2009-866 of 15 July 2009 Art. 1 IV<sup>1</sup> Official Journal of 16 July 2009 (formerly Article L. 134-2)*

## Chapter III Rules Applicable to Other Payment Instruments

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V<sup>1</sup> Official Journal of 16 July 2009*

### Section 1 Scope and Definitions

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V<sup>1</sup> Official Journal of 16 July 2009*

Article L. 133-1. - I. - This chapter applies to payment transactions carried out by the payment service providers listed in Book V within the framework of those activities defined in II of Article L. 314-1.

II. - With the exception of the provisions listed in I of Article L. 133-14, the provisions of this chapter are applicable when the payment service provider of the payee and of the payer are located within the territory of Metropolitan France, the Overseas *départements*, Saint Barthélemy, Saint Martin, Mayotte and Saint Pierre and Miquelon, and when the transaction is carried out in euros.

With the exception of the provisions listed in I of Article L. 133-14, the provisions of this chapter are also applicable when one of the payment service providers of the payee or the payer is located within the territory of Metropolitan France, the overseas *départements*, Saint Barthélemy or Saint Martin, and the other is located within the territory of Metropolitan France, the overseas *départements*, Saint Barthélemy, Saint Martin or within another Member State of the European Community or a State party to the European Economic Area agreement, and when the transaction is carried out in euros or in the currency of a Member State that is not part of the euro area.

III. - The provisions of this chapter are not applicable to payment transactions carried out between payment service providers for their own account.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V<sup>1</sup> Official Journal of 16 July 2009*

*Amended by Order No. 2010-737 of 1 July 2010 Art. 38 Official Journal of 2 July 2010*

Article L. 133-1-1. - I. - When the payer's payment service provider is located in Saint Pierre and Miquelon or in Mayotte and the payee's payment service provider is located outside of France, the following provisions shall apply, regardless of the currency used for the payment transaction:

a) The provisions of Section 5 of the present chapter

b) The provisions of Section 6 of the present chapter with respect to unauthorised card payment transactions. In this case, notwithstanding the second paragraph of I of Article L. 133-19, the payer shall, prior to the information stipulated in Article L. 133-17, bear the losses associated with the use of the lost or stolen instrument subject to a ceiling of 150 euros in the event of an unauthorised payment transaction carried out without using the personalised security features

c) The provisions of the first paragraph of Article L. 133-23 and Article 133-24 with respect to unauthorised card payment transactions. In this case, notwithstanding Article L. 133-24, the period of thirteen months shall be reduced to seventy days. It may be contractually extended, but shall not exceed one hundred and twenty days.



d) The provisions of II of Article L. 133-26.

II. - The provisions of I are also applicable when the payment service provider of the payer is located within the territory of Metropolitan France, the overseas *départements*, Saint Barthélemy or Saint Martin, and the payment service provider of the payee is located within a State that is not a member of the European Community nor party to the European Economic Area agreement, regardless of the currency used for the payment transaction.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

*Amended by Order No. 2010-737 of 1 July 2010 Art. 38 Official Journal of 2 July 2010*

Article L. 133-2. - Save for cases in which the user is a natural person acting for non-business purposes, contractual exceptions may be made to the provisions of Article L. 133-1-1, the second paragraph of Article L. 133-7, Articles 133-8, L. 133-19, L. 133-20, L. 133-22, L. 133-23, L. 133-25, L. 133-25-1, L. 133-25-2 and I of Article L. 133-26.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

*Amended by Order No. 2010-737 of 1 July 2010 Art. 38 Official Journal of 2 July 2010*

Article L. 133-3. - I. – A payment transaction is an action that consists of depositing, transferring or withdrawing funds, independent of any underlying obligations between the payer and the payee, which is ordered by either the payer or the payee.

II. – A payment transaction may be ordered:

a) By the payer, who gives a payment order to his payment service provider

b) By the payer, who issues a payment order through the intermediary of the payee, who, having received the payer's payment order, transmits it to the payer's payment service provider, if need be, via the intermediary of his own payment service provider

c) By the payee, who gives a payment order to the payer's payment service provider, based on consent granted by the payer to the payee and, if need be, via the intermediary of his own payment service provider.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

Article L. 133-4. - For application of the present chapter:

a) By "personalised security features" is understood any and all technical means extended by a payment service provider to a user for the use of a payment instrument. These features, which are specific to the payment service user and for which he is responsible, serve to identify the user

b) By "unique identifier" is understood a combination of letters, digits and/or symbols provided to the payment service user by the payment service provider, which the payment service user must present in order to allow, either alternatively or cumulatively and for the purposes of the payment transaction, definitive identification of the other payment service user and his payment account

c) By "payment instrument" is understood, alternatively or cumulatively, any personalised security features and all procedures agreed upon between the payment service user and the payment service provider, and of which the payment service user makes use in order to issue a payment order

d) A business day is a day during which the payment service provider for either the payer or the payee carries out an activity allowing payment transactions to be performed.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

Article L. 133-5. - The responsibilities envisioned in sections 2 to 9 of the present chapter are not applicable in the event of force majeure, nor if the payment service provider is bound by other legal obligations as set forth in national or Community legislation.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

## Section 2 Authorisation of a Payment Transaction

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

Article L. 133-6. - I. – A payment transaction is authorised if the payer has given his consent to its execution.

The payer and his payment service provider may nevertheless agree that the payer may give his consent to the payment transaction after its execution.

II. – A series of payment transactions is authorised if the payer has given his consent to the execution of the series of transactions.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

Article L. 133-7. - Consent shall be given in a form agreed upon between the payer and his payment service provider.

If no such consent has been given, the transaction or series of transactions are deemed not to be authorised.

As long as the payment order has not acquired irrevocable status in accordance with the provisions of Article L. 133-8, the payer may withdraw his consent.

Consent to the performance of a series of payment transactions may be withdrawn, such that all later transactions are deemed not to be authorised.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

Article L. 133-8. - I. – Except as otherwise provided in the present Article, a payment service user may not revoke a payment order once it has been received by the payer's payment service provider.

II. – When the payment transaction is ordered by the payee, or by the payer who issues a payment order via the intermediary of the payee, the payer may only revoke the payment order prior to having transmitted the payment order to the payee, or to having given his consent to the execution of the payment transaction with respect to the payee.

In the case of direct debit, and without prejudice to the right of reimbursement referred to in Article L. 133-25, the payer may nevertheless revoke the payment order at the latest by the close of the business day preceding the agreed-upon day for the debit of the funds.

III. – In the case when the user who ordered the payment transaction and his payment service provider have agreed that the execution of the payment order shall begin on a given day, or at the end of a specified period, or on the day on which the payer has set funds at his payment service provider's disposal, the payment service user may revoke the payment order at the latest by the close of the business day preceding the agreed-upon day

IV. – Upon expiry of the periods referred to in I, II and III, the payment order may only be revoked if the payment service user and his payment service provider so agree. In the cases referred to in II, the consent of the payee is also required. If the deposit account agreement or the payment service framework contract so stipulate, the payment service provider may charge a fee for the revocation.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

### Section 3 Requirements for executing a payment transaction

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

Article L. 133-9. - The point in time of receipt is the time when the payment order is received by the payer's payment service provider.

If the payment service user initiating a payment order and his payment service provider agree that execution of the payment order shall start on a specific day or at the end of a certain period or on the day on which the payer has set funds at his payment service provider's disposal, the point in time of receipt is deemed to be the agreed day.

If the point in time of receipt is not on a business day for the payer's payment service provider, the payment order shall be deemed to have been received on the following business day.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

Article L. 133-10. - I. – When the payment service provider refuses to carry out a payment order, he notifies the payment service user, or makes the notification available to the user in an agreed manner, at the earliest opportunity, and in any case, within the period specified in Article L. 133-13. If possible, and unless prohibited by other relevant Community or national legislation, the payment service provider shall also state the reasons for refusal. When the refusal is justified by a non-serious error, the provider shall, if possible, inform the payment service user of the procedure to follow to correct this error.

The deposit account agreement or the payment service framework contract may include a condition that the payment service provider may charge for such a notification if the refusal is objectively justified.

For the purposes of Articles L. 133-13 and L. 133-22, a payment order of which execution has been refused shall be deemed not to have been received.

II. – In the case of direct debit, when the amount to be credited to the payee's account constitutes an advance, the payment service framework contract or the deposit account agreement shall specify the consequences of reversing the transaction when it is not charged to the payer's account.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

Article L. 133-11. - The payment service provider to both the payer and payee as well as their intermediaries in the payment transaction shall transfer the full amount of the payment transaction and refrain from deducting charges from the amount transferred.

However, the payee and his payment service provider may agree that the payment service provider deduct its charges from the amount transferred before crediting it to the payee. In such a case, the full amount of the payment transaction and charges shall be separated in the information given to the payee.

If other charges are deducted from the amount transferred, the payment service provider of the payer shall ensure that the payee receives the full amount of the payment transaction initiated by the payer. Where the payment transaction is initiated by the payee, or by the payer who issues a payment order via the intermediary of the payee, the payment service provider shall ensure that the payee receives the full amount of the payment transaction.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

### Section 4 Execution Time for Payment Transactions and Value Dating

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

Article L. 133-12. - Without prejudice to the provisions of Article L. 133-1, the provisions of the present section shall apply to payment transactions carried out in euros and payment transactions involving only one currency conversion between the euro and the currency of a State party to the European Economic Area agreement outside of the euro area, provided that the required currency conversion is carried out in the Member State outside the euro area concerned and, in the case of cross-border payment transactions, the cross-border transfer takes place in euros.

These provisions also apply to payment transactions other than those referred to in the preceding paragraph, unless otherwise agreed between the payment service user and his payment service provider. However, when the payment service user and his payment service provider agree on a longer period than those set forth in Article L. 133-13, such period shall not exceed four business days following the point in time of receipt of the payment order.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

Article L. 133-13. - I. – The amount of the payment transaction shall be credited to the payee's payment service provider's account no later than the close of the business day following the point in time of receipt of the payment order as defined in Article L. 133-9. For payment transactions orders issued on paper, this period may be extended by one additional business day.

For the purposes of the present Article, a payer and his payment service provider may, until 1 January 2012, agree on a different period, which may not exceed three business days. For payment transaction orders issued on paper, this period may be extended by one additional business day.

II. – The payee's payment service provider shall transmit a payment order given by the payee, or by the payer who issues a payment order via the intermediary of the payee, to the payer's payment service provider within the time limits agreed between

the payee and his payment service provider. These time limits must allow direct debits to be paid on the agreed due date.

III. – Where the payee does not have a payment account with the payment service provider, the funds shall be made available to the payee by the payment service provider who receives the funds within the period specified in the present Article.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

Article L. 133-14. - I. – The credit value date for the payee's payment account shall be no later than the business day on which the amount of the payment transaction is credited to the payee's payment service provider's account.

The payee's payment service provider shall place the amount of the transaction at the disposal of the payee after its own account has been credited.

The debit value date for the payer's payment account shall be no earlier than the day on which the amount of the payment transaction is debited from that payment account.

These provisions shall apply where one of the payment service providers involved in the transaction is located within the territory of Metropolitan France, the overseas *départements*, Saint Martin, Saint Barthélemy, Mayotte, or Saint Pierre and Miquelon.

Any stipulation in contradiction of the present indent I is null and void.

II. – Where a natural person not acting for his business requirements places cash on a payment account with a payment service provider in the currency of that payment account, the payment service provider shall ensure that the amount is made available and value dated immediately after the point of time of the receipt of the funds.

Where the placement is made by a person other than the one referred to in the previous paragraph, the amount shall be made available and value dated at the latest on the next business day after the receipt of the funds.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

*Amended by Order No. 2010-737 of 1 July 2010 Art. 38 Official Journal of 2 July 2010*

## Section 5 Obligations of the Parties Applicable to Payment Instruments

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

Article L. 133-15. - I. – The payment service provider who provides a payment instrument shall ensure that the instrument's personalised safety features as defined in Article L. 133-4 are not accessible to parties other than the user entitled to use this instrument.

The payment service provider shall refrain from sending an unsolicited payment instrument, except where a payment instrument already given to the payment service user is to be replaced.

II. – The payment service provider shall put in place resources to ensure that the user may carry out, at any moment, the notification provided for in Article L. 133-17.

Upon request, the payment service provider shall provide the user with the means to prove that he carried out the notification provided for in Article L. 133-17, as determined by decree.

III. – The payment service provider shall prevent all use of the payment instrument after having been notified, pursuant to the provisions of Article L. 133-17, of the loss, theft, misappropriation or unauthorised use of the payment instrument or of the data associated with it.

IV. – The payment service provider shall bear the risk of sending a payment instrument to the payer or of sending any personalised security features of it.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

Article L. 133-16. - The payment service user shall, as soon as he receives a payment instrument, take all reasonable steps to keep its personalised security features safe.

He shall use the payment instrument in accordance with the terms governing its issue and use.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

Article L. 133-17. - I. – Upon becoming aware of the loss, theft, misappropriation or unauthorised use of his payment instrument or of the data associated with it, the payment service user shall, without undue delay and for the purposes of blocking the instrument, inform his payment service provider, or the entity specified by his provider.

II. – When a payment has been made using a payment card issued by a credit institution or a public institution or department referred to in Article L. 518-1 which enables its holder to withdraw or transfer funds, a stop may be put on payment in cases of receivership or liquidation involving the payee.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

## Section 6 Claims and Responsibilities in the Case of an Unauthorised Payment Transaction

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

### Subsection 1 Responsibility

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

Article L. 133-18. - In the case of an unauthorised payment transaction notified by the user in accordance with Article L. 133-24, the payer's payment service provider shall immediately refund to the payer the amount of the unauthorised transaction and, where applicable, shall restore the debited payment account to the state (1) in which it would have been had the unauthorised payment transaction not taken place.

The payer and his payment service provider may contractually agree on additional compensation.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

*Amended by Order No. 2010-737 of 1 July 2010 Art. 38 Official Journal of 2 July 2010*

## Subsection 2 The Special Case of Payment Instruments with Personalised Security Features

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

Article L. 133-19. - I. – In the case of an unauthorised payment transaction following the loss or theft of a payment instrument, the payer shall, prior to the notification stipulated in Article L. 133-17, bear the losses associated with the use of the lost or stolen instrument subject to a ceiling of 150 euros.

The payer shall not be held liable, however, in the case of an unauthorised payment transaction carried out without the use of the personalised security features.

II. – The payer shall not be held liable where the unauthorised payment transaction was carried out by misappropriation, without the payer's knowledge, of the payment instrument or of the data associated with it.

Likewise, he does not incur liability in the event of misuse of the payment instrument if he was in physical possession of his instrument when the unauthorised payment transaction took place.

III. – Except where he has acted fraudulently, the payer shall not bear any financial consequences if the payment service provider does not provide appropriate notification means so that the payment instrument may be blocked, as stipulated in Article L. 133-17.

IV. – The payer shall bear all the losses relating to any unauthorised payment transactions if he incurred them by acting fraudulently or by failing to fulfil, with intent or gross negligence, one or more of the obligations imposed by Articles L. 133-16 and L. 133-17.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

Article L133-20 Having informed his payment service provider, or the entity specified by his provider, pursuant to Article L. 133-17 for the purposes of blocking the payment instrument, the payer shall not bear any financial consequences resulting from use of this instrument or the misappropriation of the data associated with it, except where he has acted fraudulently.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

## Section 7 Responsibility in the Case of Incorrectly Executed Payment Transactions

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

Article L. 133-21. - If a payment order is executed in accordance with the unique identifier provided by the payment service provider, the payment order shall be deemed to have been executed correctly with regard to the payee specified by the unique identifier.

If the unique identifier provided by the payment service user is incorrect, the payment service provider shall not be liable for incorrect execution of the payment transaction.

However the payer's payment service provider shall attempt to recover the funds involved in the payment transaction.

If the deposit account agreement or the payment service framework contract so stipulate, the payment service provider may charge recovery fees to the payment service user.

If the payment service user provides information in addition to the unique identifier, or such information specified in the deposit account agreement or in the payment service framework contract as is necessary for the correct execution of the payment transaction, the payment service provider shall be liable only for the execution of the payment transaction in accordance with the unique identifier provided by the payment service user.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

Article L. 133-22. - I. – When the payment order is issued by the payer, his payment service provider is, subject to Articles L. 133-5 and L. 133-21, liable to the payer for correct execution of the payment transaction up to the receipt of the amount of the payment transaction in accordance with I of Article L. 133-13 by the payee's payment service provider. Following this, the payee's payment service provider shall be liable to the payee for the correct execution of the payment transaction.

Where the payer's payment service provider is liable under the first subparagraph, for the incorrectly executed payment transaction, he shall without undue delay refund the payer's amount to him. Where applicable, he shall restore the debited account to the state in which it would have been had the incorrectly executed payment transaction not taken place.

Where the payee's payment service provider is liable under the first subparagraph, he shall immediately place the amount of the payment transaction at the payee's disposal and, where applicable, credit the corresponding amount to his account.

II. – When a payment transaction is ordered by the payee or the payer, who issues a payment order via the intermediary of the payee, the payee's payment service provider shall, without prejudice to Articles L. 133-5 and L. 133-21, be liable to the payee for correct transmission of the payment order to the payment service provider of the payer, in accordance with an agreed procedure in order to allow a payment transaction that respects the time limit indicated in II of Article L. 133-13.

In the absence of such transmission, the payee's payment service provider shall immediately retransmit the payment order to the payment service provider of the payer, who is henceforth liable for correct execution of the payment transaction.

As soon as the payer's payment service provider has made the amount available, the payee's payment service provider becomes once again liable to the payee, without prejudice to Articles L. 133-5 and L. 133-21, for the immediate execution of the payment transaction in accordance with its obligations under I of Article 133-14.

In the case of a incorrectly executed payment transaction, where the payee's payment service provider is not liable, the payer's payment service provider who is therefore liable, shall, as appropriate and without undue delay, refund to the payer the amount of the incorrectly executed payment transaction and restore the debited account to the state in which it would have been had the incorrectly executed payment transaction not taken place.

III. – In the case of an incorrectly executed payment transaction, the user's payment service provider shall, regardless of his liability, on the user's request, make immediate efforts to trace the payment transaction and notify the user of the outcome.

IV. – Payment service providers shall be liable to their respective payment service users for any charges and for any interest to which the payment service user is subject as a consequence of the incorrect execution of the payment transaction for which they are responsible.



*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

## Section 8 Practical Procedures and Time Periods in the Case of Unauthorised or Incorrectly Executed Payment Transactions

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

Article L. 133-23. - Where a payment service user denies having authorised an executed payment transaction or claims that the payment transaction was not correctly executed, it is for his payment service provider to prove that the payment transaction was authenticated, duly recorded, entered in the accounts and not affected by a technical breakdown or some other deficiency.

The use of a payment instrument recorded by the payment service provider shall not necessarily be sufficient in itself to prove either that the transaction was authorised by the payer or that the payer failed with intent or gross negligence to fulfil his obligations.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

Article L. 133-24. - The payment service user shall, without undue delay, notify his payment service provider of any unauthorised or incorrectly executed payment transactions, and no later than 13 months after the debit date under pain of extinction, except where the payment service provider has failed to provide or make available the information on that payment transaction in accordance with Chapter IV of Title 1 of Book III.

Except in the case where the user is a natural person not acting for his business requirements, the parties may agree to waive the provisions of the present Article.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

*Amended by Order No. 2010-737 of 1 July 2010 Art. 38 Official Journal of 2 July 2010*

## Section 9 Refund of a Payment Transaction Ordered by a Payee or Payer who Issues a Payment Order via the Intermediary of the Payee

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

Article L. 133-25. - I. – The payer is entitled to a refund from his payment service provider for an authorised payment transaction, which was ordered by the payee or by the payer who issued the payment order via the intermediary of the payee, if the authorisation did not specify the exact amount of the payment transaction and if the amount of the transaction exceeded the amount the payer could reasonably have expected taking into account his previous spending pattern, the conditions in his framework contract and relevant circumstances of the case.

At the payment service provider's request, the payer shall provide all information relating to the requested refund.

II. – In the case where the amount of the payment transaction exceeds the amount the payer could reasonably have expected, under I, the payer may not rely on currency exchange reasons if the reference exchange rate agreed with his payment service provider was applied.

III. – The payer shall notify his request for a refund within a period of eight weeks from the date on which the funds were debited. Within ten business days of receiving a request for a refund, the payment service provider shall either refund the full amount of the payment transaction or provide justification for refusing the refund, indicating the possibility of recourse to the mediation procedure set forth in Article 315-1.

IV. – The refund as determined in the present section shall consist of the full amount of the executed payment transaction.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

Article L. 133-25-1. - For direct debits, the payer and his payment service provider may agree in the deposit account agreement or the payment service framework contract that the payer is entitled to a refund from his payment service provider, even though the conditions for refund as set forth in I of Article L. 133-25 have not been met. The payment service provider has no grounds for refusal of this refund.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

Article L. 133-25-2. - It may be agreed in the deposit account agreement or the payment service framework contract between the payer and the payment service provider that the payer has no right to a refund where he has given his consent to execute the payment transaction directly to his payment service provider and, where applicable, where information on the future payment transaction was provided or made available in an agreed manner to the payer at least four weeks before the due date by the payment service provider or by the payee.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

## Section 10 Charges Applicable

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

Article L. 133-26. - I. – The payment service provider may not charge the payment service user for fulfilment of its notification obligations or corrective and preventive measures under this chapter, unless otherwise specified in IV of Article L. 133-8, in I of Article L. 133-10 or in Article L. 133-21. The charges set forth in the aforementioned Articles shall be agreed between the payment service user and the payment service provider and shall be appropriate and in line with the payment service provider's actual costs.

II. The amount of the charges resulting from an instance of non-payment other than the rejection of a cheque shall be subject to a ceiling under conditions set by decree, based on the nature and the amount of the non-payment, and shall not in any event exceed this amount.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

Article L. 133-27. - Where a payment transaction does not involve any currency conversion, each user is liable for charges levied by his payment service provider.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*



## Section 11 Low-Value Payment Instruments

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

Article L. 133-28. - I. – A decree defines the maximum amounts for payment, expenses or the storage of funds, beneath which the payment instruments that were designed to secure compliance with these thresholds are considered to be reserved for low-value payments.

II. – For the instruments referred to in I, the payment service provider may agree with the payer that:

1° The payer may not revoke the payment order after transmitting it or giving his consent to execute the payment transaction to the payee

2° Execution periods other than those referred to in Article L. 133-13 may apply

3° The payment service provider shall not be required to notify the payment service user of the refusal of a payment order, if the user had knowledge of it when giving his payment order

4° II and II of Article L. 133-15, Article L. 133-17, III of Article L. 133-19 and Article L. 133-20 shall not necessarily apply to the instruments referred to in I, for which the payment service provider does not have the ability to freeze the payment account or block the payment instrument

5° Article L. 133-18, I, II and IV of Article L. 133-19 and Article 133-23 shall not necessarily apply to the instruments referred to in the present Article if the instrument is used anonymously or if the payment service provider is not in a position for other reasons which are intrinsic to the payment instrument to prove that a payment transaction was authorised

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 1 V Official Journal of 16 July 2009*

(Chapter IV Letters of Exchange and Promissory Notes

*Relocated by Order No. 2009-866 of 15 July 2009 Art. 1 IV Official Journal of 16 July 2009 as of 1 November 2009 see Chapter II Article L. 134-1 become the new Article L. 132-1 and L. 134-2 becomes L. 132-2)*

# PART IV THE BANQUE DE FRANCE

## Chapter I: Missions

### Section 1 Primary missions

Article L. 141-1. - The Banque de France is an integral part of the European System of Central Banks instituted by Article 8 of the Founding Treaty of the European Community and fulfils the missions and complies with the objectives assigned to it by the Treaty.

Within this framework, and without prejudice to the primary objective of price stability, the Banque de France provides support for the Government's general economic policy.

In carrying out the missions it performs on account of its participation in the European System of Central Banks, the Banque de France, in the person of its Governor or its Deputy

Governors may neither solicit nor accept instructions from the Government or from any person.

*Amended by Act No. 2007-212 of 20 February 2007 Art. 1 II Official Journal of 21 February 2007*

*Amended by Act No. 2008-776 of 4 August 2008 Art. 174 Official Journal of 5 August 2008*

Article L. 141-2. - Under the conditions determined in the Statute of the European System of Central Banks, and Article 30 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank, relating to the transfer of exchange reserve assets to the European Central Bank, and Article 31 of the said Protocol relating to the management of the exchange reserve assets held by the national central banks, the Banque de France holds and manages the State's gold and currency reserves and enters them on the assets side of its balance sheet pursuant to the terms and conditions of an agreement it enters into with the State.

Consistent with the provisions of Article 111 of the Founding Treaty of the European Community, and with particular reference to the international organisations within which the Member States may negotiate and to the international agreements they may enter into, and likewise, consistent with Article 6, paragraph 2, of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank relating to the international monetary institutions in which the European Central Bank and, subject to its agreement, the national central banks, are authorised to participate, the Banque de France may, with the consent of the Minister for the Economy, participate in international monetary agreements.

*Amended by Act No. 2008-776 of 4 August 2008 Art. 174 Official Journal of 5 August 2008*

Article L. 141-3. - The Banque de France is prohibited from authorising overdrafts or granting any other type of credit to the Trésor Public or to any other public body or undertaking. The direct acquisition of their debt instruments by the Banque de France is also prohibited.

The agreements entered into between the State and the Banque de France determine, when necessary, the terms of repayment of the advances granted to the Trésor Public by the Banque de France prior to 1 January 1994.

The provisions of the first paragraph do not apply to public credit institutions which enjoy the same treatment as private credit institutions in regard to the provision of liquid assets by the Banque de France.

Article L. 141-4. - I - The Banque de France ensures that the payment systems used in connection with its participation in the European System of Central Banks function correctly and securely, consistent with the proper operation of payment systems as envisaged in Article 105, paragraph 2, of the Founding Treaty of the European Community.

The invocability against third parties and implementation of the rights of the national central banks which are members of the European System of Central Banks and of the European Central Bank in regard to financial instruments, bills, receivables or sums of money pledged, assigned or otherwise provided as a guarantee in their favour are not affected by initiation of the procedures referred to in Book VI of the Commercial Code or any equivalent judicial or amicable procedure based on a foreign legal system, or any civil enforcement proceedings initiated on the basis of French law or a foreign legal system, or the exercise of a right to object.

The Banque de France ensures that the means of payment as defined in Article L. 311-3, other than fiduciary currency, are secure and that the regulations applicable thereto are pertinent. If it considers that any such means of payment offers insufficient

guarantees of security, it may recommend that its issuer take all appropriate measures to remedy the situation. If such recommendations are not followed, it may, having obtained the issuer's observations, decide to draft a negative opinion for publication in the Official Journal.

In performing these missions, the Banque de France carries out the necessary inspections and obtains from the issuer or another party involved the relevant information concerning the means of payment and the terminals or other technical devices associated therewith.

A Payment Card Security Monitoring Panel has been established, which is composed of members of Parliament, representatives of the authorities concerned, payment card issuers and traders' and consumers' associations. Among other things, the Payment Card Security Monitoring Panel monitors the data protection measures taken by the issuers and the traders, the compilation of fraud statistics and technological watch in regard to payment cards with the object of providing a means of combating technical attacks on the security of payment cards. The Panel's secretariat is provided by the Banque de France. The President is appointed from among its members. A decree issued following consultation with the Conseil d'Etat stipulates its composition and its powers.

The Panel draws up an activity report each year which is sent to the Minister for the Economy, Finance and Industry and is communicated to Parliament.

II. - In connection with its membership in the European System of Central Banks, and without prejudice to the powers of the Autorité des Marchés Financiers and the Prudential Supervisory Authority, the Banque de France oversees the security of the systems used to clear, settle and deliver financial instruments.

*Amended by Act No. 2001-420 of 15 May 2001 Art. 30 III Official Journal of 16 May 2001*

*Amended by Act No. 2001-1062 of 15 November 2001 Art. 39 Official Journal of 16 November 2001*

*Amended by Act No. 2001-1168 of 11 December 2001 Art. 27 1° Official Journal of 12 December 2001*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 V 1°*

*Amended by Order No. 2005-171 of 24 February 2005 Art. 3 Official Journal of 25 February 2005.*

Article L. 141-5. - Pursuant to Article 106, paragraph I, of the Founding Treaty of the European Community, which gives the European Central Bank a monopoly regarding authorisation to issue banknotes in the Community, the Banque de France alone is authorised to issue banknotes which are legal tender in Metropolitan France and the overseas *départements* and also on the territory of Saint Barthélemy and Saint Martin.

It exercises these same powers in Mayotte and Saint Pierre and Miquelon.

When banknotes denominated in francs are withdrawn from circulation, the Banque de France must pay the State the balance not presented at its counters.

The Banque de France is responsible for maintaining the fiduciary currency and providing satisfactory circulation thereof throughout the national territory.

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 86 Official Journal of 7 May 2005*

*Amended by Order No. 2008-698 of 11 July 2008 Art. 1 Official Journal of 16 July 2008*

Article L. 141-6. - I - The Banque de France is authorised to obtain from credit institutions, payment institutions, investment firms, undertakings for collective investment in transferable securities, financial companies, insurance and reinsurance companies governed by the Insurance Code and industrial and

commercial undertakings any document and information necessary for the accomplishment of its main tasks.

II. - The Banque de France establishes the balance of payments and the external position of France. It contributes to the establishment of the balance of payments and to the global external position of the euro area in connection with its membership in the European System of Central Banks as well as to the establishment of the statistics of the European Community in the domain of balance of payments, international trade in services and foreign direct investments.

III. - A decree sets forth the sanctions applicable in case of infringement of the declarative obligations referred to in I and II.

IV. - The Banque de France, the National Institute for Statistics and Economic Research and ministerial statistic services exchange, in compliance with applicable legal provisions, the data which are necessary for the accomplishment of their respective tasks. The modalities of exchange are determined in agreements.

Tax administration officers may communicate to the Banque de France the data in their possession which are necessary for the accomplishment of the tasks referred to in II.

*Re-established in Section 1 by Act No. 2007-212 of 20 February 2007 Art. 3 Official Journal of 21 February 2007*

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 2 Official Journal of 16 July 2009*

## Section 2 Other public interest missions and other activities

Article L. 141-6.

*Amended and re-established in Section 1 by Act No. 2007-212 of 20 February 2007 Art. 3 Official Journal of 21 February 2007*

Article L. 141-7. - The Banque de France also performs other public interest missions.

In this context, the Banque de France provides services which are requested by the State or delivered to third parties with the latter's agreement.

At the request of the State or with its agreement, the Banque de France may also provide services for the State or for third parties. Such services are charged for in order to cover the Banque's costs.

The nature of the services referred to above and the charges applicable to them are determined in agreements entered into by the Banque de France and, depending on the case, the State or the third parties involved.

*Amended by Act No. 2007-212 of 20 February 2007 Art. 3 Official Journal of 21 February 2007*

Article L. 141-8. - The following may hold accounts with the Banque de France:

1. Institutions governed by the provisions of Article L. 511-9
2. The Trésor Public, the Institut d'Émission des Départements d'Outre-mer, the Institut d'Émission d'Outre-mer and the Caisse des Dépôts et Consignations
3. Investment service providers governed by Part III of Book V
4. Foreign central banks and foreign credit institutions
5. International financial institutions and international organisations

6. Under conditions determined by the General Council, officials of the Banque de France and any other person holding customer accounts at the Banque de France as of 6 August 1993

7. Any other institution or person expressly authorised to open an account with the Banque de France by a decision of the General Council

8. Payment institutions governed by Chapter II of Part II of Book V

*Amended by Act No. 2005-516 of 20 May 2005 relating to the regulation of postal activities Art. 16 IV<sup>3°</sup> Official Journal of 21 May 2005*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 2 Official Journal of 16 July 2009*

Article L. 141-9. - The Banque de France may carry out, for its own account and for third parties, any transaction relating to gold, means of payment or securities denominated in foreign currencies or defined by reference to a weight in gold.

The Banque de France may lend or borrow sums in euros or in foreign currency to and from foreign banks and foreign or international monetary institutions or bodies.

When such transactions are executed, the Banque de France shall request or provide the guarantees which it considers appropriate.

## Chapter II Organisation of the Banque

### Section I Status of the Banque de France

Article L. 142-1. - The Banque de France is an institution whose capital belongs to the State.

### Section 2 The General Council

*(Section title amended by Act No. 2007-212 of 20 February 2007 Art. 1 I Official Journal of 21 February 2007)*

Article L. 142-2. - The Banque de France is administered by a General Council.

It deliberates on questions relating to the management of the Banque de France's activities other than those which come within the scope of its missions for the European System of Central Banks.

It deliberates on the regulations applicable to its staff. The said regulations are submitted to the appropriate ministers by the Governor of the Banque de France for authorisation.

The General Council also deliberates on equity capital use, prepares the provisional and amending cost budgets taking care to provide the Banque with the necessary means to fulfil the missions it performs on account of its membership in the European System of Central Banks, closes off the Banque's balance sheet and accounts and draws up the plans for allocating the profits and fixing the dividend due to the State.

The General Council appoints two auditors entrusted with auditing the accounts of the Banque de France. They are invited to attend the General Council meeting which approves the accounts for the previous year.

*Replaced by Act No. 2007-212 of 20 February 2007 Art. 1 I Official Journal of 21 February 2007*

*Amended by Act No. 2008-776 of 4 August 2008 Art. 174 Official Journal of 5 August 2008*

Article L. 142-3. - I. - The General Council of the Banque de France comprises:

1° The Governor and two Deputy Governors of the Banque de France

2° Two members appointed by the President of the National Assembly and two members appointed by the President of the Senate taking into account of their competence and of their professional financial or economic experience

3° Two members appointed by a Cabinet decree upon proposal made by the Minister for the Economy, taking into account their competences and professional financial or economic experience

4° An elected representative of the Banque's employees.

**5° The Vice-President of the Autorité de Contrôle Prudentiel.**

The duration of tenure of those General Council members listed in 1° to 4° shall be six years without prejudice to the provisions of the ninth paragraph. They are bound by professional secrecy.

As from 1 January 2009, half of the members appointed according to the provisions of 2° are replaced every three years. At each triennial renewal, one member is appointed by the President of the National Assembly and one member is appointed by the President of the Senate.

The members appointed according to the provisions of 2° are replaced at least eight days before their tenure expires. If one of these members is unable to complete his term of office, he is replaced immediately in the manner described in the previous paragraph and he fulfils his functions for the unexpired portion of the term of office of the person he replaces.

The functions of the members appointed in application of 2° and 3° above do not exclude a private professional activity with the consent of the General Council given at the majority of its members other than the person concerned. The Council examines the absence of conflicts of interest and the respect of the principle of independence of the Banque de France. Absence of conflicts of interest implies that members may not perform any function or have any interest in the service providers referred to in Parts I to V of Book V. These members cannot accept a parliamentary mandate.

II. - The validity of the deliberations is subject to at least six members being present.

The decisions are taken on a majority of the members present. In the event of there being a hung vote, the chairman has a casting vote.

The General Council may delegate powers to the Governor of the Banque de France, who may sub-delegate them under conditions determined by the Council.

A censor, or his deputy, designated by the Minister for the Economy, attends the meetings of the General Council. He may submit proposals for resolutions to the Council for deliberation.

The resolutions adopted by the General Council are final unless they are challenged by the censor or his deputy.

*Amended by Supplementary Budget Act No. 2002-1576 of 30 December 2002 Art. 85 I Official Journal of 31 December 2002*

*Replaced by Act No. 2007-212 of 20 February 2007 Art. 1 I Official Journal of 21 February 2007*

*Amended by Act No. 2008-776 of 4 August 2008 Art. 173 Official Journal of 5 August 2008*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 12 Official Journal of 23 October 2010*

(Section 3 The Monetary Committee of the General Council,  
*Repealed by Act No. 2008-776 of 4 August 2008 Art. 173 Official Journal of 5 August 2008 - Articles L. 142-4 to L. 142-7 repealed*)

## Section 4 The Governor and the Deputy Governors

Article L. 142-8. - The Banque de France is managed by the Governor of the Banque de France.

The Governor chairs the General Council of the Banque de France.

He prepares and implements the resolutions of the General Council.

He represents the Banque in its dealings with third parties; he alone signs all agreements on behalf of the Banque.

He makes all appointments within the Banque, without prejudice to the provisions of Article L.142-3. He adopts the measures necessary for the implementation of the guidelines of the European Central Bank.

The Governor is assisted by a first and a second Deputy Governor. The Deputy Governors perform the duties which are delegated to them by the Governor. In the event of the Governor being absent or unable to perform his functions, the General Council is chaired by one of the Deputy Governors specially appointed for that purpose by the Governor.

The Governor and the two Deputy Governors are appointed by a Cabinet decree for a term of six years, renewable once. The age limit applicable to the exercise of these functions is set at sixty-five years.

They may be removed from office ahead of time by a majority decision of the members of the General Council, excluding the member concerned, ruling on a duly reasoned proposal from the Council, only if they become incapable of performing their duties or are guilty of serious misconduct.

The functions of the Governor and of the Deputy Governors exclude any other public or private professional activity, salaried or otherwise, with the exception of, if appropriate, with the consent of the General council, teaching or functions performed with international organisations. They cannot assume elective office. If they have civil servant status, they are placed in secondment and cannot be promoted on merit.

A Governor or Deputy Governor who stands down for a reason other than removal from office for serious misconduct shall continue to receive his salary for three years. During that period, they cannot engage in professional activities without the consent of the General Council, with the exception of elective public functions or the functions of a member of the Government. In the event of the General Council authorising professional activities, or of their assuming elective public functions which are not national, the Council shall determine the conditions under which all or part of their salary may continue to be paid to them.

*Amended by Act No. 2007-212 of 20 February 2007 Art. 1 III Official Journal of 21 February 2007*

*Amended by Act No. 2008-776 of 4 August 2008 Art. 174 Official Journal of 5 August 2008*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 76 Official Journal of 23 October 2010*

## Section 5 The Banque de France staff

Article L. 142-9. - The staff of the Banque de France are bound by professional secrecy.

They cannot take or receive an equity holding or any other interest or remuneration of any kind in return for working for or advising a public or private industrial, commercial or financial entity unless a derogation is granted by the Governor. These provisions do not apply to the production of scientific, literary or artistic works.

The General Council of the Banque de France shall determine, under the conditions set out in the third paragraph of Article L. 142-2, the rules applicable to the staff of the Banque de France in the domains where the provisions of the Labour Code are incompatible with the statutes or with the public service duties entrusted to it.

Articles L. 2323-19, L. 2323-21, L. 2323-22, L.2323-23, L. 2323-24, L. 2323-26, L. 2323-78, L. 2323-82 and L. 2323-86 of the Labour Code shall not apply to the Banque de France.

Apart from those listed in the foregoing paragraph, the provisions of Chapter II of Part III of Book IV of the Labour Code shall apply to the Banque de France only with regard to the duties and other activities which, under Article L. 142-2, fall within the competence of the General Council.

The central staff committee and, if applicable, the local staff committees of the Banque de France may call upon the expert referred to in Article L. 2325-35 of the Labour Code only after the procedure provided for in Articles L. 1233-29 and L. 1233-30 of that code has been followed.

The conditions under which Articles L. 2323-83 and L. 2323-87 of that code shall apply to the Banque de France shall be determined by a decree issued following consultation with the Conseil d'Etat.

*Amended by Act No. 2007-212 of 20 February 2007 Art. 7 Official Journal of 21 February 2007*

## Section 6 Branches

Article L. 142-10. - The Branches of the Banque de France participate in the implementation of the Banque's assignments. They contribute to maintenance of the fiduciary currency and execution of bank money payments. They also contribute to awareness of the local economic fabric and the dissemination of monetary and financial information. They administer and monitor the records relating to over-indebtedness as determined in Article L. 141-7.

In the performance of their duties, they maintain relations with the banks, businesses, chambers of commerce and industry, local authorities and devolved Government departments within their jurisdiction.

*Amended by Act No. 2008-776 of 4 August 2008 Art. 174 Official Journal of 5 August 2008*



## Chapter III Reporting to the President of the Republic – Parliamentary Oversight

Article L. 143-1. - The Governor of the Banque de France sends the President of the Republic and Parliament a report at least once each year on the Banque de France's activities, the monetary policy it is pursuing within the framework of the European System of Central Banks and the outlook for this policy.

Pursuant to the provisions of Article 108 of the Founding Treaty of the European Community and the rules of confidentiality of the European Central Bank, the Governor of the Banque de France appears before the finance committees of the National Assembly and Senate when so requested, and may ask to appear before them.

The accounts of the Banque de France and the auditors' report are sent to the finance committees of the National Assembly and Senate.

*Amended by Act No. 2007-212 of 20 February 2007 Art. 1 IV Official Journal of 21 February 2007*

*Amended by Act No. 2008-776 of 4 August 2008 Art. 174 Official Journal of 5 August 2008*

## Chapter IV Miscellaneous Provisions

Article L. 144-1. - The Banque de France may make direct contact with undertakings and professional groupings which are prepared to participate in its inquiries. These undertakings and professional groupings may communicate to the Banque de France any information on their financial situation.

The Banque de France may pass on some or all of the information that it holds concerning the financial situation of undertakings to the other central banks, to the other institutions which are responsible for carrying out assignments similar to those entrusted to the Banque in France, and to credit institutions and other financial institutions.

Under the conditions set forth in the Insurance Code, the Banque de France may also pass on this information to insurance firms authorised to carry out in France credit insurance and surety transactions, provided that their actions involve companies.

**The Banque shall determine beforehand how this information is to be communicated and establish the reporting requirements of these firms.**

The methods and models used for risk rating by these firms shall be transmitted to the Autorité de Contrôle Prudentiel.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 79 Official Journal of 2 August 2003*

*Amended by Act No. 2007-212 of 20 February 2007 Art. 3, 5 and 6 Official Journal of 21 February 2007*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 59 Official Journal of 23 October 2010*

Article L. 144-2. - The Banque de France's transactions and the activities referred to in the second paragraph of Article L. 142-2 are governed by the civil and commercial legislation.

*Amended by Act No. 2008-776 of 4 August 2008 Art. 174 Official Journal of 5 August 2008*

Article L. 144-2-1. - The real estate of the Banque de France is subject to the provisions of the General Code of Public Entities Properties applicable to State public entities.

The movables belonging to the Banque de France are not attachable.

*Inserted by Order No. 2006-460 of 21 April 2006 Art. 3 Official Journal of 22 April 2006.*

Article L. 144-3. - The administrative courts hear cases relating to the Banque de France's internal administration or between the Banque and members of the General Council or its staff.

*Replaced by Act No. 2007-212 of 20 February 2007 Art. 1 V Official Journal of 21 February 2007*

Article L. 144-4. - A decree issued following consultation with the Conseil d'Etat sets forth the present Part's implementing regulations.

It determines the amount of the Banque de France's capital, the procedures for establishing its annual budget, for financing its investments, for presenting and approving the accounts, for allocation of the annual profits and for remuneration of the members of the General Council, as well as the procedures for electing the Banque de France's employees' representative on the General Council.

*Amended by Act No. 2007-212 of 20 February 2007 Art. 1 VI Official Journal of 21 February 2007*

Article L. 144-5. - A decree sets forth the maximum length during which the information held by the Banque de France regarding company directors and entrepreneurs can be communicated to third parties.

*Inserted by Act No. 2008-776 of 4 August 2008 Art. 75 Official Journal of 5 August 2008*

# PART V FINANCIAL DEALINGS WITH FOREIGN COUNTRIES

## Chapter I General Provisions

Article L. 151-1. - Financial dealings between France and foreign countries are unrestricted.

This freedom is enjoyed subject to the procedures described in the present Chapter, in keeping with the international undertakings given by France.

Article L. 151-2. - In order to defend the national interest, the Government may, via a decree enacted on the basis of a report from the Minister for the Economy:

1. Make the following subject to declaration, prior authorisation or inspection:

a) Foreign exchange transactions, capital movements and settlements of all kinds between France and foreign countries

b) The establishment, change of composition and disposal of French assets abroad

c) The establishment and disposal of foreign investments in France



d) Gold imports and exports and all other material movements of assets between France and foreign countries

2. Order the repatriation of foreign receivables outside the European Community resulting from exports of goods, payment for services and, more generally, any foreign revenue or income

3. Authorise intermediaries to carry out the transactions referred to in 1. a) and d) above

Article L. 151-3. - I. Foreign investment in any activity in France which, even if only occasionally, is part of the exercise of public authority or pertains to one of the following domains is subject to prior approval from the Minister for the Economy:

a) Activities likely to jeopardise public order, public safety or national defence interests

b) Research in, and production or marketing of, arms, munitions, or explosive powders or substances.

A decree issued following consultation with the Conseil d'Etat specifies the nature of the above activities.

II. - The approval granted may have special conditions attached to it to ensure that the planned investment does not jeopardise the national interests referred to in I.

The decree referred to in I specifies the conditions which may be attached to the approval.

III. - If the Minister for the Economy finds that a foreign investment is being, or has been, made in violation of the prescriptions of I or II, he may order the investor to desist from proceeding with the transaction, to alter the nature thereof or to restore the status quo ante at his own expense.

Such an order cannot be given until formal notice has been served on the investor to make his observations known within fifteen days.

If the aforementioned order is not complied with, the Minister for the Economy may, having given the investor an opportunity to present his observations on the allegations against him within a time limit of at least fifteen days, and without prejudice to restoration of the status quo ante, impose a financial penalty on him, the amount of which shall not be more than double that of the irregular investment. The amount of the financial penalty shall be proportional to the seriousness of the violations committed. The amount of the penalty shall be recovered in the same way as the State's foreign tax and property debts.

Such decisions qualify for a remedy of full jurisdiction.

The decree referred to in I shall determine the implementing regulations of III.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 78 Official Journal of 2 August 2003*

*Amended by the Simplification of Law Act No. 2004-1343 of 9 December 2004 Art. 30 Official Journal of 10 December 2004.*

Article L. 151-4. - Any undertaking, agreement or contractual clause which directly or indirectly gives rise to a foreign investment in an activity referred to in I of Article L. 151-3 when that investment has not received the prior authorisation required under c) of 1. of Article L. 151-2 is null and void.

## Chapter II Reporting Obligations

Article L. 152-1. - Natural persons who transfer money, securities or assets to or from a European Union Member State without using a credit institution, a payment institution or one of

the institutions or services referred to in Article L. 518-1, must make a declaration as determined by decree.

A declaration is made for each transfer, apart from transfers of amounts below 10,000 euros.

*Amended by Supplementary Budget Act No. 2001-1276 of 28 December 2001 Art. 51 III Official Journal of 29 December 2001*

*Amended by Act No. 2006-1771 of 30 December 2006 Art. 96 Official Journal of 31 December 2006*

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 2 Official Journal of 16 July 2009*

Article L. 152-2. - Natural persons, associations, and non-commercial societies who/which are domiciled or established in France are subject to the provisions of the second paragraph of Article 1649 A of the General Tax Code.

Article L. 152-3. - Credit institutions, payment institutions and the institutions and services referred to in Article L. 518-1 must, if so requested, inform the tax and customs authorities of the date of transfer and the amount of the sums transferred abroad by the persons indicated in Article L. 152-2, with identification of the transferor and the transferee and the account references of the relevant accounts in France and abroad. These provisions also apply to transactions executed on non-resident accounts for those persons.

The institutions referred to in the first paragraph are required, as determined in Article L. 102 B of the Book of Tax Procedures, to retain all documents, information, data or processing details pertaining to the transfers referred to in the previous paragraphs.

On advice from the National Commission for Information Technology and Freedom of Information, a decree issued following consultation with the Conseil d'Etat may determine a set of specific rules applicable to the storage and dissemination of the information held by the institutions referred to in the first paragraph.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 2 Official Journal of 16 July 2009*

Article L. 152-4. I - Failure to discharge the reporting obligations imposed by Article L. 152-1 and by Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community shall be punished by a fine equal to one quarter of the sum involved in the offence or attempted offence.

II. - In the event of customs officers discovering an offence referred to in I, they shall confiscate the entire sum to which the offence or attempted offence relates for a period of three months, which period may be renewed with authorisation from the Public Prosecutor with jurisdiction over the place where the customs authority handling the case is located but shall not exceed a total period of six months.

The sum confiscated shall be duly attached, and forfeiture thereof may be pronounced by the competent court if, during the period of confiscation, it is established that the offender referred to in I is or was in possession of objects which give grounds for thinking that he is or was the perpetrator of one or more offences stipulated in and punishable under the Customs Code, or that he is participating or has participated in the commission of such offences, or if it is reasonable to assume that the offender referred to in I has committed one or more offences stipulated in and punishable under the Customs Code or that he has participated in the commission of such offences.

Dismissal of the charges or acquittal and discharge automatically entails the lifting of the confiscation and attachment measures imposed, with the Trésor Public meeting the cost

thereof. The same applies in the event of extinction of an action seeking application of tax penalties.

III. - Detection, recording and prosecution of the offences referred to in I take place as determined in the Customs Code.

If the fine envisaged in I is imposed, the 40% increase referred to in the first paragraph of Article 1758 of the General Tax Code shall not be applied.

*Amended by Act No. 2004-204 of 9 March 2004 Art. 33 Official Journal No. 59 of 10 March 2004 page 4567*

*Amended by Order No. 2005-1512 of 7 December 2005 Art. 24 III Official Journal of 8 December 2005*

*Amended by Act No. 2006-1771 of 30 December 2006 Art. 96 Official Journal of 31 December 2006*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 46 Official Journal of 23 October 2010*

Article L. 152-5. - Violations of the provisions of Article L. 152-2 shall incur a fine of 750 euros per undeclared account.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

Article L. 152-6. - Institutions which fail to comply with the obligations imposed by Article L. 152-3 are liable to a fine equal to 50% of the amount of the undeclared sums. If the taxpayer can show that the Trésor Public has not suffered any damage, the level of the fine is reduced to 5% and the amount thereof is subject to a ceiling of 750 euros for a first offence.

The offence shall be recorded and the fine collected, guaranteed and contested in the manner stipulated for breaches of the provisions relating to the tax authorities' right to discovery referred to in Article L. 152-3.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

## Chapter III Assets of Foreign Central Banks

*Inserted by Act No. 2005-842 of 26 July 2005 Art. 51 Official Journal of 27 July 2005.*

Article L. 153-1. - Assets of whatever kind, including foreign exchange reserve assets, which foreign central banks or foreign monetary authorities hold or manage for their own account or on behalf of the State or foreign State(s) that govern them cannot be attached.

As an exception to the provisions of the first paragraph, a creditor holding a writ of execution establishing a certain and payable debt may request the enforcement judge to authorise enforcement as provided for in Act No. 91-650 of 9 July 1991 reforming the civil enforcement procedures if he can establish that the assets held or managed by a foreign central bank or a foreign monetary authority for its own account form part of resources allocated to a primary activity governed by private law.

*Inserted by Act No. 2005-842 of 26 July 2005 Art. 51 Official Journal of 27 July 2005.*

# PART IV CRIMINAL PROVISIONS

## Chapter I Offences relating to the Prohibition on Cash Settlement of Certain Debts

*(Art. L. 161-1. - Repealed by Order No. 2009-104 of 31 January 2009 Art. 8 Official Journal of 31 January 2009)*

## Chapter II Counterfeit Money

*Heading amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 19 Official Journal of 7 May 2005*

Article L. 162-1. - Counterfeiting and forgery of metallic coins and banknotes, as well as the conveying, distribution and holding of counterfeit or forged metallic coins and banknotes with the intention of passing them into circulation are penalised by Articles 442-1 to 442-15 of the Criminal Code.

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 20 Official Journal of 7 May 2005*

*Amended by Act No. 2007-1544 Art. 41 Official Journal of 30 October 2007*

Article L. 162-2. - Whoever has received counterfeit or forged banknotes or metallic coins has an obligation to submit them, or to arrange submission thereof, to the Banque de France in the case of banknotes, and to the Monnaie de Paris in the case of metallic coins.

The Banque de France and the Monnaie de Paris are authorised to hold and, if need be, destroy any banknotes and metallic coins which they declare to be counterfeit or forged.

*Amended by Act No. 2006-1666 of 21 December 2006 Art. 36 Official Journal of 27 December 2006*

*Amended by Act No. 2007-1544 Art. 41 Official Journal of 30 October 2007*

## Chapter III Offences relating to Cheques and Other Bank Money Instruments

*Heading amended by Order No. 2009-866 of 15 July 2009 Art. 2 Official Journal of 16 July 2009*

Article L. 163-1. - A drawee who refuses to pay a cheque on the grounds that the drawer has placed a stop on it, save for the cases referred to in the second paragraph of Article L. 131-35, shall incur a fine of 6,000 euros.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

Article L. 163-2. - Whoever, having issued a cheque, withdraws all or part of the cover for that cheque via a bank transfer or by any other means with the intention of prejudicing the rights of others, or forbids payment by the drawee in those

same circumstances, shall incur a term of five years' imprisonment and a fine of 375,000 euros.

The same sentence shall apply to whoever knowingly agrees to receive or endorse a cheque issued in the circumstances described in the previous paragraph.

The same sentence shall apply to whoever issues one or more cheques in violation of an order made against him pursuant to Article L. 131-73.

The same sentence shall apply to an agent who knowingly issues one or more cheques which his principal was prohibited from issuing pursuant to Article L. 131-73.

For the preparation, examination, pre-trial investigation and judgement of the offences referred to in the previous paragraphs, the court of the place where the cheque is payable shall have jurisdiction, without prejudice to application of Articles 43, 52 and 382 of the Code of Criminal Proceedings.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

Article L. 163-3. - Whoever commits the following offences shall incur a term of seven years' imprisonment and a fine of 750,000 euros:

1. Counterfeiting or forging a cheque or other instrument set forth in Article L. 133-4

2. Knowingly using or attempting to use a counterfeit or forged cheque or other instrument set forth in Article L. 133-4

3. Knowingly agreeing to accept a payment made using a counterfeit or forged cheque or other instrument set forth in Article L. 133-4

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

*Amended by Act No. 2007-1544 Art. 41 Official Journal of 30 October 2007*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 2 Official Journal of 16 July 2009*

Article L. 163-4. - Whoever manufactures, acquires, stores, transfers or offers to make available equipment, instruments, computer programs or any data designed or specially adapted to commit the offences envisaged in 1 of Article L. 163-3 shall incur a term of seven years' imprisonment and a fine of 750,000 euros.

*Inserted by Act No. 2001-1062 of 15 November 2001 Art. 40 Official Journal of 16 November 2001*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 2 Official Journal of 16 July 2009 – previously Article L.163-4-1*

Article L. 163-4-1. - Any attempt to commit the offences envisaged in 1 of Article L. 163-3 and Article L. 163-4 shall incur the same sentence.

*Inserted by Act No. 2001-1062 of 15 November 2001 Art. 40 Official Journal of 16 November 2001*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 2 Official Journal of 16 July 2009 – previously Article L. 163-4-2*

Article L. 163-5. - The forfeiture and destruction of counterfeit or forged cheques and other instruments as set forth in Article L. 133-4 is compulsory in the cases envisaged in Articles L. 163-3 to L. 163-4-1. Forfeiture of the materials, machinery, apparatus, instruments, computer programs and any data which was used or was intended to be used for the manufacture of the said objects is also compulsory, unless they were used without the owner's knowledge.

*Amended by Act No. 2001-1062 of 15 November 2001 Art. 42 Official Journal of 16 November 2001*

*Amended by Act No. 2007-1544 Art. 41 Official Journal of 30 October 2007*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 2 Official Journal of 16 July 2009*

Article L. 163-6. - In all the cases envisaged in Articles L. 163-2 to L. 163-4-1 and L. 163-7, the court may impose the loss of civic, civil and family rights as provided for in Article 131-26 of the Criminal Code, as well as a ban on the exercising of a professional or commercial activity, for a maximum period of five years, pursuant to the provisions of Articles 131-27 and 131-28 of the Criminal Code.

In these same cases, the court may prevent the defendant, for a period of five years, from issuing any cheques other than those that only allow withdrawal of funds from the drawee by the drawer or those which are certified. This ban may be declared enforceable in anticipation. It shall be combined with an order for the defendant to return those cheque forms in his possession and those held by his representatives to the bankers who issued them. The court may order that extracts from the judgment be published, at the defendant's expense, in the newspapers that it indicates and under the terms it chooses.

As a result of this ban, any banker that has been informed of the ban by the Banque de France shall refrain from issuing the defendant and his representatives any and all cheque forms other than those set forth in the preceding paragraph.

*Amended by Act No. 2001-1062 of 15 November 2001 Art. 43 Official Journal of 16 November 2001*

Article L. 163-7. - Whoever issues one or more cheques in breach of a ban imposed pursuant to Article L. 163-6 shall incur a term of five years' imprisonment and a fine of 375,000 euros.

The same sentence shall apply to an agent who knowingly issues one or more cheques which his principal was prohibited from issuing pursuant to Article L. 163-6.

For the preparation, examination, pre-trial investigation and judgement of the offences referred to in the previous paragraphs, the court of the place where the cheque is payable shall have jurisdiction, without prejudice to application of Articles 43, 52 and 382 of the Code of Criminal Proceedings.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

Article L. 163-8. - All offences punishable under Articles L. 163-2, L. 163-3 with respect to cheques, and those penalised by Article L. 163-7 with respect to recidivism, are deemed to constitute a single offence.

*Amended by Order No. 2009-866 of 15 July 2009 Art. 2 Official Journal of 16 July 2009*

Article L. 163-9. - When criminal proceedings are initiated against the drawer, it is admissible for the bearer taking civil action to seek from the criminal court judges a sum equal to the amount of the cheque, without prejudice, if appropriate, to any damages. He may nevertheless bring proceedings to obtain payment of his debt before the civil or commercial courts, if he prefers.

If civil action is not instituted and if proof of payment of the cheque cannot be adduced from the elements introduced into the proceedings, the criminal court judges may, even as a matter of course, order the drawer to pay the beneficiary, in addition to the costs of complying with the judgment, a sum equal to the amount of the cheque, and, if appropriate, interest with effect from the day of presentation pursuant to Article L. 131-52 and the charges

resulting from the non-payment, if the cheque has not been endorsed and this is not a consequence of collection procedures and the original thereof is in the case file. When the provisions of the present paragraph are applied, the beneficiary may obtain an enforceable copy of the decision in the same way as a party who has filed a civil action.

Article L. 163-10. - The following offences committed by the drawee shall incur a fine of 12,000 euros:

1. Indicating cover lower than the cover actually available
2. Rejecting a cheque for insufficiency or unavailability of cover without indicating, when such is the case, that the cheque was issued in violation of an order made pursuant to Article L. 131-73 or in violation of a prohibition imposed pursuant to Article L. 163-6
3. Failure to declare, under conditions stipulated by decree issued following consultation with the Conseil d'Etat, instances of non-payment, and also the offences referred to in the third paragraph of Article L. 163-2 and the first and second paragraphs of Article L. 163-7
4. Contravening the provisions of Articles L. 131-72, L. 131-73 and the third paragraph of Article L. 163-6

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

Article L. 163-10-1. - Legal entities declared criminally liable, under the conditions set forth in Article 121-2 of the Criminal Code, for the offences indicated in Articles L. 163-2 to L. 163-4, L. 163-7 and L. 163-10, shall, in addition to the fines provided for in Article 131-38 of the Criminal Code, incur the penalties provided for in Article 131-39 of the same Code.

The disqualification referred to in 2° of Article 131-39 of the Criminal Code relates to the activity in connection with which the offence was committed.

*Inserted by Act No. 2001-1062 of 15 November 2001 Art. 44 Official Journal of 16 November 2001*

*Amended by Act No. 2009-526 of 12 May 2009 Art. 125 Official Journal of 13 May 2009*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 2 Official Journal of 16 July 2009*

Article L. 163-11. - Whoever commits the following offences shall incur the penalties imposed by Article 226-21 of the Criminal Code:

1. Using the information stored by the Banque de France pursuant to the first paragraph of Article L. 131-85 for purposes other than those intended by Articles L. 131-1 to L. 131-87 relating to cheques and Articles L. 1-1 and L. 132-2 relating to payment cards

2. Storing the information referred to in the first paragraph of Article L. 131-85 in place of the Banque de France

*Amended by Act No. 2005-516 of 20 May 2005 relating to the regulation of postal activities Art. 16 IV<sup>8°</sup> Official Journal of 21 May 2005*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 2 Official Journal of 16 July 2009*

*Amended by Order No. 2010-737 of 1 July 2010 Art. 38 Official Journal of 2 July 2010*

Article L. 163-12. - Whoever disseminates or holds information obtained pursuant to Article L. 131-86 shall incur the penalties imposed by Article 226-21 of the Criminal Code.

## Chapter IV Offences Pertaining to the Banque de France

Article L. 164-1. - Any member of the General Council who violates the professional secrecy instituted in Article L. 142-3 shall incur the penalties imposed by Article 226-13 of the Criminal Code, without prejudice to the exceptions provided for in Article 226-14 of the Criminal Code.

*Amended by Act No. 2007-212 of 20 February 2007 Art. 2 Official Journal of 21 February 2007*

*Amended by Act No. 2008-776 of 4 August 2008 Art. 173 Official Journal of 5 August 2008*

Article L. 164-2. - Any staff member of the Banque de France who violates the professional secrecy instituted in the first paragraph of Article L. 142-9 shall incur the penalties imposed by Article 226-13 of the Criminal Code, without prejudice to the exceptions provided for in Article 226-14 of the Criminal Code.

## Chapter V Offences against the Legislation on Financial Dealings with Foreign Countries

Article L. 165-1. - Breaches of the obligations referred to in Article L. 151-2 are penalised pursuant to Article 459 of the Customs Code. The provisions of Article 451 of the Customs Code are also applicable.

# BOOK II PRODUCTS

## Part I FINANCIAL INSTRUMENTS

### CHAPTER I Definition and General Regulations

*Amended by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

#### Section 1 Definitions

Article L. 211-1. - I. - Financial instruments include both financial securities and financial contracts.

II. - Financial securities include:

1. Equity securities issued by joint-stock companies
2. Debt securities, with the exception of bills of exchange and interest-bearing notes
3. Units or shares in undertakings for collective investment

III. - Financial contracts, also referred to as "financial futures", are futures contracts that appear on a list established by decree.

*Replaced by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

#### Section 2 Financial securities

*Amended by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

##### Subsection 1 Conditions of Issue

*(heading amended by Order No. 2004-604)*

Article L. 211-2. - Financial securities, which include transferable securities as defined in the second paragraph of Article L. 228-1 of the Commercial Code, may be issued only by the State, a legal entity, a common fund, a real-estate investment trust or a securitisation common fund.

*Replaced by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

##### Subsection 2 Registration

##### Paragraph 1 General provisions

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 211-3. - Financial securities, issued on French soil and under French legislation, are recorded in a securities account kept either by the issuer, or by one of the intermediaries listed in paragraphs 2 to 7 of Article L. 542-1.

*Replaced by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 211-4. - The securities account shall be in the name of one or more account holders, who are the owners of the financial securities recorded therein.

As an exception, the securities account may be opened:

1. In the name of a common fund, a real-estate investment trust or a securitisation common fund, and the name of the fund may be validly substituted for those of all the co-owners.

2. In the name of an intermediary acting on behalf of the owner of the financial securities, referred to in the seventh paragraph of Article L. 228-1 of the Commercial Code and under conditions stipulated in that Code.

*Replaced by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 211-5. - The procedure for identifying the owners of equity securities is set out in Articles L. 228-2 to L. 228-3-4 of the Commercial Code.

The identification procedure referred to in the first paragraph is applicable to real-estate collective investment schemes, regardless of whether or not they are joint-stock companies, and may be carried out by the undertakings' management companies. The procedure is applicable to all of these undertakings, notwithstanding the lack of specific stipulations in their constitutional documents or rules. Identification requests shall be made either directly to custody account-keepers or via the intermediary of the central depository.

*Replaced by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

*Completed by Order No. 2009-107 of 30 January 2009 Art. 4 Official Journal of 31 January 2009)*

##### Paragraph 2 Custody account-keeping

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 211-6. - The securities account shall be kept by the issuer where the law so requires or where the issuer decides to do so. Otherwise, the owner of the securities shall decide whether the account shall be kept by the issuer or an intermediary referred to in Article L. 211-3.

A decree issued following consultation with the Conseil d'Etat shall determine this article's implementing provisions.

*Replaced by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 211-7. - Securities admitted to the operations of a central depository may be placed in a securities account kept by an authorised intermediary referred to in Article 211-3, unless otherwise decided by the issuer.

Securities that are not admitted to the operations of a central depository must be placed in a securities account kept by the issuer on behalf of the securities owner. Nevertheless, unless forbidden by law or the issuer, units or shares in collective investment undertakings may be placed in a securities account kept by an intermediary referred to in Article L. 211-3.



*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 211-8. - The custody account-keeper may, under conditions established by the General Regulation of the Autorité des Marchés Financiers, entrust some of all of its responsibilities to a third party.

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

### Paragraph 3 Protection for account holders

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 211-9. - The custody account-keeper shall protect the rights of the account holders concerning the financial securities held in the accounts. He may use these securities for his own account only under the conditions set forth in paragraph 6° of Article L. 533-10.

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 211-10. In the event of a court-ordered reorganisation or liquidation procedure being initiated against the intermediary referred to in Article L. 211-3, the receiver or liquidator, acting jointly with the provisional receiver or liquidator, if any, appointed by the Autorité de Contrôle Prudentiel, shall verify, for each financial security, that the number of securities held in an account with a central depository or with another intermediary on behalf of the defaulting intermediary, regardless of the nature of the accounts opened with them, is sufficient to enable the intermediary to meet its obligations towards the account holders.

In the event of the number of securities held being insufficient, an allocation of securities shall be made among the account holders in proportion to the securities made available; the account holders may arrange to have them credited to an account kept by another intermediary or by the issuer of the securities, from whom they recover.

They are exempted from making the declaration set forth in Article L. 621-43 of the Commercial Code in respect of the debt corresponding to the financial securities that have not been made available to the account holders due to there being an insufficient number thereof on hand with the central depository or other intermediary.

The bankruptcy judge shall be informed of the result of the audit carried out by the receiver or the liquidator and, if applicable, the proportionate allocation of financial securities as well as the transfers made at the account holders' request.

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 211-11. - No attachment, even of a protective nature, of accounts opened with a central depository shall be allowed.

No enforcement measure or protective measure against an intermediary referred to in Article L. 211-3 shall be allowed in respect of financial securities entered in an account opened in his name in the books of another intermediary referred to in the same article where they do not belong to the initial intermediary.

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 211-12. - Subject to the provisions set forth in Article L. 211-11, attachments of financial securities are governed by the provisions of Act 91-650 of 9 July 1991 on the reform of civil enforcement procedures.

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

### Paragraph 4 Transitional provisions

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 211-13. - The provisions of this sub-section shall not apply to bonds redeemable by random draw issued before 3 November 1984. Nor shall they apply to registered non-redeemable government loans issued before that date.

The holders of financial securities issued before that same date may only exercise the rights attached to their instruments if said instruments have been entered in an account by the issuer or presented to the intermediary referred to in Article L. 211-3 for entry in an account. Under conditions specified by decree, issuers or intermediaries must sell the rights pertaining to financial securities that have not been presented, or whose holders are unknown or have not been contacted since that same date of 3 November 1984. The proceeds of the sale shall be held pending possible restitution to the assigns.

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

### Subsection 3 Transmission

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

### Paragraph 1 Negotiability

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 211-14. - With the exception of shares in real-estate investment companies referred to in Article L. 214-50, and shares held in forestry investment companies referred to in Article L. 214-85, financial securities are negotiable.

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 211-15. - Financial securities shall be transmitted by book transfer.

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 211-16. - No one may lay claim, for any reason whatsoever, to a financial security the ownership of which was acquired in good faith by the holder of the account in which these securities are registered.

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

### Paragraph 2 Transfer of ownership

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 211-17. - Transfer of ownership of financial securities shall result from the entry of these securities in the purchaser's account.

Where financial securities are admitted to the operations of a central securities depository or delivered within a settlement and delivery system referred to in Article L. 330-1, transfer of ownership shall result from the entry of the securities in the

purchaser's account, on the date and under the conditions defined by the General Regulation of the Autorité des Marchés Financiers.

As an exception to the preceding paragraphs, where the settlement and delivery system ensures the delivery of the financial securities by providing for ongoing irrevocable settlement, transfer to the purchaser shall only take place when the purchaser has paid the price. As long as the purchaser has not paid the price, the intermediary who received the financial securities is the owner. The General Regulation of the Autorité des Marchés Financiers shall determine the detailed rules governing transfer of ownership that are applicable in the case set forth in this paragraph.

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

**Article L. 211-17-1. - I. - The purchaser and the seller of financial instruments referred to in Article L. 211-1 are, upon the execution of the order, definitively bound, the former to pay, and the latter to deliver, on the date mentioned in paragraph II of this article.**

A seller of financial instruments referred to in paragraph I of Article L. 211-1 and admitted to trading on a regulated market may not issue a sell order if he does not have in his account the financial instruments to be sold, or if he has not taken the necessary measures with respect to a third-party in order to be reasonably assured of his ability to deliver said financial instruments, at the latest on the date stipulated for delivery following trading.

The provisions of this article may be waived under conditions stipulated by decree following a reasoned opinion of the Board of the Autorité des Marchés Financiers.

The provider to whom the order is transmitted may require, upon reception of the order or upon its execution, that collateral in the form of cash be placed in its books in the case of a purchase, or the financial instruments to be sold in the case of a sale.

**II. - In the case of trading of financial instruments referred to in paragraph II of Article L. 211-1, transfer of ownership share results from the entry in the account of the purchaser. This entry shall take place on the effective trading settlement date referred to in the operational rules of the settlement and delivery system where the purchaser's custody account-keeper's account, or the account of the proxy of this custody account-keeper, is credited in the books of the central securities depository.**

This date of trading settlement and, simultaneously, entry in the account shall take place within two days of the trading following the date of order execution. This deadline may be waived for technical reasons, in cases set forth in the General Regulation of the Autorité des Marchés Financiers.

The same date shall apply where the financial instruments of the purchaser and the seller are entered in the books of one and the same custody account-keeper.

Subparagraphs 2 and 3 of this paragraph II shall take effect on the date of the entry into force of an equivalent harmonisation arrangement at European level.

**III. - The Autorité des Marchés Financiers may impose sanctions as set forth in paragraphs II and III of Article L. 621-15 against any individual or legal entity who carries out a transaction whose goal or results is to contravene the provisions of paragraphs I and II of this article.**

*Inserted by Act No. 2010-1249 of 23 October 2010 Art. 27 Official Journal of 23 October 2010*

**Article L. 211-18. - If financial securities are delivered against a cash settlement, failure to deliver or to settle observed on the date and under the conditions defined in the General Regulation of the Autorité des Marchés Financiers or, failing this, under the terms of an agreement between the parties shall eliminate any obligation that the non-defaulting party has with respect to the defaulting party, any legal provision to the contrary notwithstanding.**

Where an intermediary referred to in Article L. 211-3 shall deliver securities or settle a price in substitution for his defaulting client, he shall have full ownership of the financial securities or the money received in exchange. The provisions of Book VI of the Commercial Code shall not prevent the application of this article. No creditor of the defaulting client may lay any claim whatsoever to these financial securities or this cash.

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

**Article L. 211-19.** For each order to trade, sell or transfer a financial security entered in an account held by the issuer and admitted to the operations of a central securities depository, or for any other modification affecting the entry of said financial security in an account, the intermediary referred to in Article L. 211-3 shall draw up a registered instrument message. This message, which bears a code that facilitates identification of the transaction to which it relates, indicates the client's identifying elements, the legal nature of his rights and any restrictions which apply to the financial security.

The General Regulation of the Autorité des Marchés Financiers determines the particulars of the registered instrument message and the time limits applicable to its circulation between the intermediary, the depository and the issuer.

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

#### Sub-section 4 Pledging of securities accounts

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

**Article L. 211-20. I. - The pledging of a securities account is effected, between the parties and in regard to the issuing legal entity and third parties, through a declaration signed by the account holder. This declaration contains terms established by decree. The financial securities initially credited to the pledged account and those substituted or added thereto to secure the pledgee's initial debt, as well as the income and profits derived therefrom in any currency, are included in the scope of the pledge. The financial securities and sums in any currency subsequently credited to the pledged account to secure the pledgee's initial debt are subject to the same conditions as those initially credited and are deemed to have been provided on the date of the original declaration of pledge. By issuing a simple request to the account holder, the pledgee may obtain an attestation of pledge for the securities account, consisting of an inventory of the financial securities and sums in any currency entered in the pledged account as of the date of issue of that attestation.**

**II. - The pledged account takes the form of a special account opened in the name of the account holder and kept by an intermediary referred to in Article L. 211-3, a central securities depository or, if applicable, the issuer.**

If no special account exists, the financial securities referred to in the first paragraph, along with the sums in any currency identified for this purpose by a computerised process, shall be deemed to constitute the pledged account.

III. - Where the financial securities held in the pledged account are entered in an account kept by the issuer, and where that issuer is not authorised to receive funds from the public within the meaning of Article L. 312-2, the income and profits referred to in paragraph I paid in any currency must be credited to a special account opened in the name of the holder of the pledged account in the books of an intermediary referred to in Article L. 211-3 or of a credit institution. This special account shall be deemed to form an integral part of the pledged account on the date of signing of the declaration of pledge. By issuing a simple request to the keeper of the special account, the pledgee may obtain an attestation that includes an inventory of the sums in any currency credited to that account on the date of issue of the said attestation.

IV. - The pledgee shall determine, with the account holder, the circumstances in which the latter may dispose of the financial securities and the sums in any currency held in the pledged account. In any case, the pledgee shall benefit from a lien on the financial securities and sums in any currency held in the pledged account.

V. - A pledgee holding a debt that is certain, of a fixed amount and due may, in respect of French or foreign financial securities traded on a regulated market, units or shares in collective investment undertakings, and sums in any currency, enforce a civil or commercial pledge eight days after service of a formal notice on the debtor by hand or by registered letter, or upon expiry of any other time limit agreed in advance with the account holder. The formal notice served on the debtor is notified to the pledgor when it is not also the debtor, and to the account-keeper when it is not also the pledgee. Enforcement of the pledge shall take place as established by decree.

For financial instruments other than those referred to in the previous paragraph, enforcement of the pledge shall take place pursuant to the provisions of Article L. 521-3 of the Commercial Code.

VI. The provisions of paragraph V of this article pertaining to the enforcement of pledges apply to the pledging of financial securities made before 4 July 1996.

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

*Amended by Order No. 2009-107 of 30 January 2009 Art. 4 Official Journal of 31 January 2009*

## Sub-section 5 Specific transmission methods

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

### Paragraph 1 Auctions

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 211-21. - Voluntary or forced public auctions of financial securities shall be held, if those securities are admitted to trading on a regulated market by investment service providers who are members of the regulated market on which those securities are traded, or, failing this, by an investment service provider or a notary.

Even in the case of conflicting company constitutional provisions, the provisions of this article shall apply to auctions held on account of failure to pay up shares.

The provisions of this article shall not apply to auctions of public debt securities carried out on behalf of the State.

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

### Paragraph 2 Financial securities lending

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 211-22. - The provisions of Article L. 211-24 shall apply to loans of financial securities that meet the following conditions:

1. The loan relates to financial securities

2. The loan relates to financial securities which shall not, throughout the term of the loan, be the subject of a detachment of a right to a dividend or payment of interest subject to the deduction at source referred to in paragraph 1 of Article 119 bis or in Article 1678 bis of the Code Général des Impôts (Code Général des Impôts) or giving entitlement to the tax credit referred to in paragraph 1 b) of Article 220 of that same code, or a redemption, a random draw that could give rise to a refund, an exchange or a conversion provided for in the issuing contract

3. The loan is subject to the provisions of Articles 1892 to 1904 inclusive of the Civil Code

4. The financial securities are borrowed by a legal entity that is automatically subject to a real tax regime, by a collective investment scheme, or by a non-resident individual, company or institution with comparable status.

The parties may agree on further transfers of cash or financial securities, with full title, to take account of fluctuations in the value of the loaned financial securities.

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 211-23. - The tax regime applicable to the earnings allocated to pay for financial securities lending is determined by the provisions of subparagraph 2 of paragraph I of Article 38 bis of the Code Général des Impôts.

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 211-24. - Where financial securities are loaned by a company, they are taken prioritarily from the securities of the same type bought or subscribed most recently.

The debt represented by the loaned securities shall be shown separately on the balance sheet at the original value of those securities.

Upon expiry of the loan, the returned financial securities are shown on the balance sheet at that same value.

Any provision for depreciation previously made on the loaned financial securities shall not be reincorporated when the loan is made. It must be shown on a separate line on the balance sheet and remain unchanged until those securities are returned.

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 211-25. - The loaned financial securities and the debt representing the obligation to return those securities shall be shown separately on the borrower's balance sheet at the market price on the day of the loan.

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 211-26. - Where the borrower transfers financial securities, they are taken prioritarily from the securities of the same type borrowed on the earliest date. Subsequent purchases of securities of the same type shall be allocated prioritarily to replacement of the loaned securities.

A the close of the accounting period, the loaned financial securities shown on the borrower's balance sheet and the debt representing the obligation to return them deriving from the contracts in force shall be registered at the market price of those securities on that date.

Upon expiry of the loan, the loaned financial securities shall be deemed to be returned at the value at which the debt representing the obligation to return them is shown on the balance sheet.

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

### Paragraph 3 : Repurchase agreement

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 211-27. - A repurchase agreement is the means by which a legal entity, common fund, real-estate investment trust or securitisation common fund assigns to another legal entity, common fund, real-estate investment trust or securitisation common fund, with full title and at an agreed price, financial securities, and through which the assignor and the assignee respectively and irrevocably undertake, the former, to take back the securities, and the latter, to sell them back at an agreed price and on an agreed date.

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 211-28. - A repurchase agreement relates to financial securities that shall not, throughout the term of the agreement, be subject to:

1. Detachment of a right to a dividend giving entitlement to the tax credit referred to in paragraph 1b) of Article 220 of the Code Général des Impôts

2. Payment of interest subject to the deduction at source referred to in paragraph 1 of Article 119 bis or in Article 1678 bis of the Code Général des Impôts or giving entitlement to a tax credit referred to in paragraph 1b) of Article 220 of that same code.

A redemption, or the random draw giving rise to a refund, exchange, conversion, or exercise of a warrant, extinguishes the repurchase agreement.

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 211-29. - A repurchase agreement becomes binding on third parties with effect from delivery of the securities, the terms and conditions of which are established by decree.

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 211-30. - At the time set for the repurchase, the assignor pays the agreed price to the assignee and the latter sells back the financial securities to the assignor; if the assignor fails to meet its obligation to pay the price of the repurchase, the securities are definitively acquired by the assignee, and if the assignee should fail to meet its obligation to sell back the securities, the amount of the assignment shall be definitively acquired by the assignor.

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 211-31. - Whatever form it takes, the payment made to the assignee constitutes debt income. It is treated as interest for accounting purposes.

Where the term of the repurchase agreement covers the date of payment of the income attaching to the pledged financial securities, the assignee shall pay that income to the assignor, and the latter shall include it in the income of the same type in its accounts.

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 211-32. - Following the signing of a repurchase agreement, the assignor shall enter the pledged financial securities on the assets side of its balance sheet and the amount of its debt to the assignee on the liabilities side of its balance sheet; the said securities and the said debt are shown individually under a special heading in the assignor's accounts. Moreover, the amount of the pledged financial securities, allocated in accordance with the nature of the assets concerned, must be indicated in the documents appended to the annual accounts.

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 211-33. - The pledged financial securities are not shown on the assignee's balance sheet; the assignee shows the amount the assignor owes it on the assets side of its balance sheet.

Where the assignee assigns financial securities that it has itself received in pledge, it indicates on the liabilities side of its balance sheet the amount of that assignment representing its debt in respect of financial securities, which, at the close of the accounting period, are valued at their market price. The differences in value recorded are used to determine the taxable profits for that accounting period.

Where the assignee pledges financial securities that it has itself received in pledge, it shows its debt to the new assignee on the liabilities side of its balance sheet.

The amounts representing the receivables and debts referred to in this article are shown individually in the assignee's accounts.

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 211-34. - For the purposes of Articles L. 211-27 to L. 211-33, public and private bills are to be treated in the same manner as financial securities.

Nevertheless, only credit institutions may enter into reverse repurchase agreements or repurchase agreements for private bills.

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

## Section 3 Financial contracts

*Heading amended by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 211-35. - No person shall avail himself of Article 1965 of the Civil Code in order to elude the obligations resulting from financial contracts, even if those contracts could be cancelled upon payment of a simple difference.

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*



## Section 4 Rules applicable to transactions involving financial instruments

*Heading amended by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

### Paragraph 1 Clearing and assignment of receivables

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 211-36. - I. The provisions of this paragraph shall apply to:

1° Financial obligations resulting from financial instrument transactions when at least one of the parties is a credit institution, an investment service provider, a public body, a territorial authority, any institution, individual or entity having the benefit of the provisions of Article L. 531-2, a clearing house, a non-resident institution having comparable status, or an international financial organisation or body of which France or the European Community is a member

2° Financial obligations resulting from any contract giving rise to a cash settlement or a delivery of financial instruments when all the parties belong to one of the categories referred to in the previous paragraph, with the exception of the individuals and legal entities referred to in paragraph 2 c) to n) of Article L. 531-2

3° Financial obligations resulting from any contract entered into within the framework of a system referred to in Article L. 330-1.

**II. - For the purposes of this section, financial instruments shall also cover options, futures, swaps, and all forward contracts other than those referred to in paragraph III of Article L. 211-1, providing, when these instruments require physical settlement, that they are registered by a recognised clearing house or the subject of regular requests for cover.**

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

*Amended by Order No. 2009-107 of 30 January 2009 Art. 4 Official Journal of 31 January 2009*

*Amended by Act No. 2010-1249 of 23 October 2010 Art. 28 Official Journal of 23 October 2010*

Article L. 211-36-1. I. Agreements relating to the financial obligations referred to in Article L. 211-36 are voidable, and the debts and receivables associated therewith may be offset. The parties may provide for a single balance to be established regardless of whether these financial obligations are governed by one or more agreements or framework agreements.

II. - The terms of cancellation, valuation and set-off applicable to the transactions and obligations referred to in Article L. 211-36 and in paragraph I of this article may be raised against third parties. These terms may be set forth in agreements or framework agreements. Any cancellation, valuation or set-off carried out on account of civil enforcement proceedings or the exercise of a right to object shall be deemed to have taken place prior to the said procedure.

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

*Amended by Order No. 2009-107 of 30 January 2009 Art. 4 Official Journal of 31 January 2009*

*Amended by Act No. 2010-1249 of 23 October 2010 Art. 28 Official Journal of 23 October 2010*

Article L. 211-37. - The assignment of receivables relating to the financial obligations referred to in Article L. 211-36 may be raised against third parties when the debtor is informed of the assignment. The assignment of contracts relating to the financial

obligations referred to in Article L. 211-36 may be raised against third parties with the written agreement of the parties.

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

### Paragraph 2 Securing financial obligations

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 211-38. - I. - In order to secure the present or future financial obligations referred to in Article L. 211-36, the parties may provide for the transfer with full title, enforceable against third parties without formalities, of financial instruments, bills, receivables, contracts or sums of money, or sureties on such property or rights, enforceable even when one of the parties is the subject of proceedings referred to in Book VI of the Commercial Code, or equivalent court-ordered or amicable proceedings founded on foreign legal systems, or civil enforcement proceedings or exercise of a right to object.

The debts and receivables associated with such guarantees and those relating to such obligations may thus be offset pursuant to paragraph I of Article L. 211-36-1.

II. - Where the guarantees referred to in paragraph I relate to the financial obligations referred to in paragraphs 2 and 3 of Article L. 211-36:

1° The establishment of such guarantees and their enforceability are not subject to any formality. They derive from the transfer of the relevant property and rights, the dispossession of the grantor or their control by the beneficiary or a person acting on his behalf.

2° The identification of the relevant property and rights, transfer thereof, and dispossession of the grantor or control by the beneficiary must be attestable in writing

3° Enforcement of such guarantees takes place under normal market conditions, by set-off, appropriation or sale, without formal prior notice, applying valuation methods determined by the parties when the financial obligations covered became due.

III. - The deed providing for the sureties referred to in paragraph I may specify the circumstances in which the beneficiary of those sureties may use or dispose of the relevant property and rights, on condition that he return equivalent property or rights to the grantor. The sureties concerned then relate to the equivalent property or rights thus returned as if they had been established on the same equivalent property or rights from the outset. The said deed may allow the beneficiary to offset his liability to return equivalent property or rights against the financial obligations in respect of which the sureties were established, when they have become due.

Equivalent property or rights shall be taken to mean:

1° In relation to cash: a sum of the same amount in the same currency.

2° In relation to financial instruments: financial instruments from the same issuer or debtor, forming part of the same issue or the same category, having the same denomination, denominated in the same currency and having the same designation, or other assets, when the parties so provide, in the event of a fact occurring which concerns or affects the financial instruments that constitute the guarantee.

For property or rights other than those referred to in paragraphs 1 and 2, the same property or rights shall be returned.

IV. - The terms of enforcement and set-off for the guarantees referred to in paragraph I and the obligations referred to in Article L. 211-36 are binding on third parties. Any enforcement of set-off executed on account of civil enforcement proceedings

or the exercise of a right to object is deemed to have been initiated prior to those proceedings.

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

*Amended by Act No. 2009-526 of 12 May 2009 Art. 138 Official Journal of 13 May 2009*

Article L. 211-39. - The rights or obligations of the grantor, the beneficiary or any third party relative to the guarantees referred to in paragraph I of Article L. 211-38 pertaining to financial securities are determined by the law of the State in which the account in which these securities are placed or constituted by way of guarantee.

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

### Paragraph 3 Common provisions

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 211-40. - The provisions of Book VI of the Commercial Code, or those governing any equivalent court-ordered or amicable proceedings instituted on the basis of foreign legal systems, shall not impede application of the provisions of this section.

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

## Section 5 Regulations applicable to foreign financial instruments

*Heading amended by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 211-41. - All equivalent instruments or rights pertaining to a financial investment in an entity that are issued on the basis of foreign legislation shall be treated in the same way as the financial securities referred to in Article L. 211-1.

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

## Chapter II Equity Securities

*Heading amended by Order No. 2004-604 and Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 212-1 A. - Equity securities issued by joint-stock companies include shares and other securities that give, or could give, access to the capital or voting rights.

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

### Section 1 Shares

*Heading amended by Order No. 2004-604 and Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

#### Subsection 1: Shares issued for cash and shares issued for a contribution in kind

Article L. 212-1. - The different types of shares are described in Article L. 228-7 of the Commercial Code, reproduced hereunder:

*"Article L. 228-7. - Shares issued for cash are shares whose amount is paid up in cash or by offsetting, shares that are issued following capitalisation of reserves, profits or share premiums and those whose payment derives partly from capitalisation of reserves, profits or other share premiums and partly from cash payment. The last-mentioned must be fully paid up on subscription.*

*Without prejudice to the specific rules applicable to shares resulting from a merger or a demerger, all other shares are shares issued for a contribution other than cash."*

*Amended by Order No. 2004-604 of 24 June 2004 Art. 28 Official Journal of 17 April 2004*

#### Subsection 2 Shares that must be in registered form

Article L. 212-2. - Shares issued for cash come under the provisions of Article L. 228-9 of the Commercial Code, reproduced hereunder:

*"Article L. 228-9. - A share issued for cash shall be registered until it is fully paid up."*

Article L. 212-3 - I. - Without prejudice to the provisions of Article L. 211-7, the shares of joint-stock companies issued on French territory under French legislation, excluding open-ended investment companies (*société d'investissement à capital variable*, SICAV) and limited liability real-estate investment companies with variable capital (*sociétés de placement à prépondérance immobilière à capital variable*, SPPICAV), which are not admitted to trading on a regulated market, must be registered.

II. - This requirement must be met within six months of the date of issue of the relevant shares or of the date on which they ceased to be admitted to the operations of a central securities depository.

When this period has elapsed, shareholders who do not fulfil the obligation stipulated in paragraph I may not exercise the rights attached to those securities unless they have been presented to the issuer or to an authorised intermediary for registration.

III. - The issuing firms must, within one year of expiry of the time limit indicated in paragraph II, sell the rights corresponding to the shares that have not been presented, as established by decree. The proceeds of the sale are held pending possible restitution to the assigns.

IV. - If they cannot show that they exercised due diligence to ensure effective application of these provisions, the issuing company's managers and the chairman of the Board of Directors or of the Executive Board are presumed, for the purposes of inheritance tax and wealth tax, and in the absence of proof to the contrary, to have title to any transferable securities which were not in registered form or were not sold as stipulated in paragraph III.

*Amended by Order No. 2005-1278 of 13 October 2005 Art. Official Journal of 14 October 2005*

*Amended by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 212-4. - The obligation for certain shares to be in registered form is deemed to be fulfilled when the conditions set forth in Article L. 228-2 of the Commercial Code have been met.

### Subsection 3 Preference shares

*(heading amended by Order No. 2004-604)*

Article L. 212-5. - The rules relating to the creation of preference shares are set out in Articles L. 228-11 to L. 228-20 of the Commercial Code.

*Amended by Order No. 2004-604 of 24 June 2004 Art. 30 and 52 Official Journal of 17 April 2004*

### Subsection 4 Provisions applicable to share categories that will be eliminated

*(heading amended by Order No. 2004-604)*

Article L. 212-6. - The rules relating to the creation of priority shares are set out in Articles L. 228-29-8 to L. 228-29-10 and L. 228-35-1 of the Commercial Code.

*Amended by Order No. 2004-604 of 24 June 2004 Art. 52 Official Journal of 17 April 2004*

Article L. 212-6-1. - The rules relating to the creation of non-voting preference shares are set forth in Articles L. 228-29-8 to L. 228-29-10 and L. 228-35-2 to L. 228-35-11 of the Commercial Code.

*Inserted by Order No. 2004-604 of 24 June 2004 Art. 52 Official Journal of 17 April 2004*

Article L. 212-6-2. - The rules relating to investment certificates and voting rights certificates are determined by the provisions of Articles L. 228-29-8 to L. 228-35 of the Commercial Code.

*Inserted by Order No. 2004-604 of 24 June 2004 Art. 52 Official Journal of 17 April 2004*

Article L. 212-6-3. - In order to ensure equality among the holders of investment certificates or voting rights certificates and transparency of the market, the General Regulation of the Autorité des Marchés Financiers stipulates:

1° The conditions applicable to takeover bids and requests for redemption relating to investment certificates or voting rights certificates admitted to trading on a regulated market or which have ceased to be traded on a regulated market, when the majority shareholder(s) of the company that issued those certificates hold(s), individually or jointly, within the meaning of the provisions of Article L. 233-10 of the Commercial Code, a given fraction of the capital and voting rights;

2° The conditions under which investment certificates or voting rights certificates not presented by their holders after a takeover bid or request for redemption, if they no longer represent more than 5% of the capital or voting rights, are transferred to the majority shareholders at their request, and the holders are compensated therefor.

*Inserted by Order No. 2004-604 of 24 June 2004 Art. 52 Official Journal of 17 April 2004*

Article L. 212-6-4. - Where paragraph 2 of Article L. 212-6-3 is implemented, the valuation of the securities shall be made in accordance with the objective methods applied in the event of a

transfer of assets and takes account of the value of the assets, the profits realised, the market value, the existence of subsidiaries and the commercial prospects based on a weighting appropriate to each case. The compensation shall be equal, per security, to the result of the aforementioned valuation or, if it is higher, to the price proposed for the takeover bid or request for redemption. The amount of the compensation due to unidentified holders shall be consigned.

*Inserted by Order No. 2004-604 of 24 June 2004 Art. 52 Official Journal of 17 April 2004*

## Section 2 Other securities that give, or could give, direct or indirect access to the capital or voting rights

*Heading amended by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

*(Subsections 1, 2, 3, 4 and 5 of Section 2 of Chapter II of Part I of Book II are repealed and their Articles L. 212-7, L. 212-8, L. 212-9, L. 212-10, L. 212-11 and L. 212-12 are replaced by Article L. 212-7 - Order No. 2004-604 of 24 June 2004 Art. 52 Official Journal of 17 April 2004)*

Article L. 212-7. - The rules relating to the issuing of securities giving access to the capital and the holders of such securities are set out in Articles L. 228-91 to L. 228-106 of the Commercial Code relating to transferable securities giving access to the capital.

*Amended by Order No. 2004-604 of 24 June 2004 Art. 52 Official Journal of 17 April 2004*

## Section 3 Special stock-subscription schemes for employees

### Subsection 1 Voluntary and Mandatory Employee Profit-Sharing

Article L. 212-13. - The rules relating to voluntary profit-sharing for a company's employees are contained in Chapter I of Part IV of Book IV of the Labour Code.

Article L. 212-14. - The rules relating to mandatory profit-sharing for a company's employees are contained in Chapter II of Part IV of Book IV of the Labour Code.

### Subsection 2 Capital increases

Article L. 212-15. - Companies may increase their capital by issuing shares reserved for employees under the terms and conditions set out either in Articles L. 225-187 to L. 225-197 of the Commercial Code or in Articles L. 3332-18 to 3332-24 of the Labour Code and L. 225-138-1 of the Commercial Code.

*Amended by Article 53 I and Article 13 III 2° of Order No. 2004-604 of 24 June 2004.*

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 23 Official Journal of 7 May 2005*

*Amended by Order No. 2007-329 of 12 March 2007 Art. Official Journal of 13 March 2007*

NB (1): Articles L. 225-187 to L. 225-197 of the Commercial Code have been repealed by Article 29 4° of Act 2001-152 of 19 February 2001.

### Subsection 3 Stock options

Article L. 212-16. - Options giving entitlement to subscribe to or purchase shares may be granted under the terms and conditions set forth in Articles L. 225-177 to L. 225-186 of the Commercial Code.

### Subsection 4 Founder's share warrants

Article L. 212-17. - Founder's share warrants may be allocated under the terms and conditions set out in Article 163 bis G of the Code Général des Impôts.

## CHAPTER III Debt Securities

*Heading amended by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 213-1 A. - Each debt security represents a claim against the legal entity or securitisation common fund (*fonds commun de titrisation*) that issues it.

As an exception to Article 1300 of the Civil Code and Article L. 228-74 of the Commercial Code, the following securities may be purchased and held by their issuers for the purposes of encouraging liquidity:

#### 1° Negotiable debt securities

2° Debt securities that do not give access to capital admitted to trading on a regulated market or a multilateral trading facility that is subject to the laws or regulations intended to protect investors from insider dealing, price manipulation and the dissemination of false information under the conditions set forth in the General Regulation of the Autorité des Marchés Financiers.

During the time they are held by the issuer, all of the rights attaching to the debt securities referred to in paragraph 2° shall be suspended.

The General Regulation of the Autorité des Marchés Financiers determines the conditions under which the issuer may make public the redemption of debt securities referred to in paragraph 2°.

A decree shall determine the maximum holding times for debt securities referred to in paragraph 2° that have been acquired or are being held by the issuer.

An issuer may not hold more than 15% of a single issue of a debt security referred to in paragraph 2°.

A decree shall determine the conditions under which the issuer may redeem the negotiable debt securities that he has issued, as well as the conditions under which he must inform the Banque de France of these purchases.

*Inserted by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 76 Official Journal of 23 October 2010*

## Section 1 Negotiable debt securities

Article L. 213-1. - Negotiable debt securities are financial securities, each of which represents a claim, that are issued at the discretion of the issuer, and that are tradable on a regulated market or an over-the-counter market.

*Amended by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 213-2. - Negotiable debt securities are registered in a securities account kept by an intermediary referred to in Article L. 211-3.

*Replaced by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 213-3. - The following are authorised to issue negotiable debt securities:

1. Credit institutions, investment firms and the Caisse des Depots et Consignations, subject to compliance with the conditions laid down for this purpose by the Minister for the Economy

2. Companies other than those referred to in paragraph 1, subject to them meeting the conditions relating to legal status, capital and auditing that are required of them for a public offering or admission to trading on a regulated market and whose share capital is determined by decree, or equivalent conditions for companies having their registered office abroad

3. Public-sector businesses that meet the conditions set out in paragraph 2

4. Public-sector businesses that do not have share capital but are authorised to carry out a public offering

5. Economic interest groups and partnerships made up entirely of joint-stock companies that meet the conditions set forth in paragraph 2

6. Institutions of the European Community and the international organisations

7. The Social Security Debt Redemption Fund established by Article 1 of Order No. 96-50 of 24 January 1996 to redeem the social security debt

8. Local authorities and their groupings

9. Associations governed by the Act of 1 July 1901 relating to association agreements or by Articles 21 to 79 of the Local Civil Code applicable in the *départements* of Bas-Rhin, Haut-Rhin and Moselle and which meet the conditions laid down for the issue of bonds through public offerings

10. States

11. Securitisation schemes

12. The Central Agency for Social Security Organisations

A decree shall specify the conditions that must be met by the issuers referred to in paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12, and determine the conditions of issue for negotiable debt securities.

*Amended by Act No. 2001-420 of 15 May 2001 Art. 25 I and II Official Journal of 16 May 2001*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 36 I, Art. 37, Art. 46 VI 1° Official Journal of 2 August 2003*

*Amended by Act No. 2006-1640 of 21 December 2006 Art. 38 Official Journal of 22 December 2006*

*Amended by Order No. 2008-556 of 13 June 2008 Art. 16 Official Journal of 14 June 2008*



*Amended by Order No. 2009-80 of 22 January 2009 Art. 2 Official Journal of 23 January 2009*

Article L. 213-4. - Prior to the initial issue of these instruments, issuers shall produce financial documentation concerning their activities, their economic and financial situation and their issue programme. This financial documentation, drafted in French, shall be filed with the Banque de France, which is entrusted with ensuring that the issuers comply with the conditions of issue stipulated in Article L. 213-3. A decree shall specify this article's implementing provisions and the cases and conditions under which the financial documentation may be drafted in a language widely used in financial dealings other than French.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 36 II Official Journal of 2 August 2003*

**Article L. 213-4-1. - The issuer may not pledge his own negotiable debt securities.**

*Inserted by Act No. 2010-1249 of 22 October 2010 Art. 76 Official Journal of 23 October 2010*

## Section 2 Bonds

### Subsection 1 General regulations

Article L. 213-5. - Bonds are tradable securities that, within a single issue, confer the same creditor's rights for the same par value.

Article L. 213-6. - The issue of premium bonds must be authorised by the law.

Any issue made in breach of the provisions of this article is null and void. Without prejudice to action for damages brought against the company's officers, the Public Prosecutor and any interested party may bring an action for avoidance.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 134 II Official Journal of 2 August 2003*

Article L. 213-6-1. - Any act that interrupts the statutory limitations for claims for interest with respect to one of the holders of bonds issued in France by any French or foreign institution, whether public or private, commercial or civil firm, shall benefit all other bondholders for the same issue.

This same act also interrupts, in the Treasury's favour, the statutory limitations concerning taxes that may be due on the interest referred to in the first paragraph.

*Inserted by Act. No. 2006-387 of 31 March 2006 Art. 26 Official Journal of 1 April 2006*

Article L. 213-6-2. - A final judicial ruling handed down in favour of one of the holders of bonds issued in France by any authority public or private, or by any commercial or civil firm, of whatever nationality, and concerning the common rights of the bondholders, may be made enforceable with respect to any other bondholder who does not appear in the pleadings by order of the presiding judge of the regional court (Tribunal de Grande Instance) in the jurisdiction in which the case was brought in first instance.

*Inserted by Act. No. 2006-387 of 31 March 2006 Art. 26 Official Journal of 1 April 2006*

### Subsection 2 Bonds issued by economic interest groups

Article L. 213-7. - An economic interest group may issue bonds as provided for in Article L. 251-7 of the Commercial Code.

### Subsection 3 Bonds issued by associations

Article L. 213-8. - If the associations governed by the Act of 1 July 1901 relating to association agreements or by Articles 21 to 79 of the Local Civil Code applicable in the *départements* of Bas-Rhin, Haut-Rhin and Moselle have effectively been engaged, exclusively or otherwise, in an economic activity for at least two years, they may issue bonds as envisaged in this subsection.

Article L. 213-9. - The bonds referred to in Article L. 213-8 may be redeemable at the initiative of the issuer only. In this case, they constitute lowest-ranking debts, are issued in registered form and are referred to as association securities.

Article L. 213-10. Prior to the bond issue, the association must:

1. Be registered with the Trade and Companies Register under terms and conditions established by decree
2. Stipulate in its constitutional documents the manner in which the persons responsible for managing, representing and committing it vis-à-vis third parties shall be appointed, and the establishment of a collegiate body responsible for overseeing the actions of those persons

If the constitutional documents stipulate the appointment of a Board of Directors, the association is not required to establish the collegiate organ referred to above.

The collegiate organ or Board of Directors is composed of at least three persons elected from among its members.

Article L. 213-11. - Whenever a bond issue takes place, the association must make the details of the conditions of issue available to the subscribers, as well as an information document. The latter shall provide information on the organisation, the amount of the equity capital at the close of the previous accounting period, the financial situation and the trend of the association's business.

The elements which must appear in these documents are established by decree; the figures provided therein are approved by an auditor chosen from the list referred to in paragraph I of Article L. 822-1 of the Commercial Code.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 116 Official Journal of 2 August 2003*

Article L. 213-12. - The issue of bonds by the associations referred to in Article L. 213-8 may take place by way of a public offering. In this case, it is submitted to the Autorité des Marchés Financiers's clearance procedure as stipulated in this Code.

*Amended by Supplementary Budget Act No. 2001-1276 of 28 December 2001 Art. 51 III Official Journal of 29 December 2001*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 V 1° and 2*

*Amended by Act No. 2008-7760 4 August 2008 Art. 81 Official Journal of 5 August 2008*

*Amended by Order No. 2009-80 of 22 January 2009 Art. 2 Official Journal of 23 January 2009*

Article L. 213-13. - If no public offering is made, the interest rate stipulated in the issuing contract cannot be higher than the average rate for the bond market during the quarter preceding the issue, plus a sum determined by an order issued by the Minister for the Economy, which may not exceed three points.

*Amended by Act No. 2008-7760 4 August 2008 Art. 81 Official Journal of 5 August 2008*

*Amended by Order No. 2009-80 of 22 January 2009 Art. 2 Official Journal of 23 January 2009*

Article L. 213-14. - The bond issuing contracts entered into by associations as envisaged in this subsection cannot under any circumstances be used by the issuing association to distribute profits to its members, to persons who are bound to it by a contract of employment, to its *de facto* and *de jure* executives or to any other person.

Contracts entered into in breach of the provisions of the previous paragraph are sanctioned by absolute nullity.

Article L. 213-15. The issue of bonds by an association entails the application of Articles L. 612-1 and L. 612-3 of the Commercial Code to that association, regardless of the number of employees, the amount of its turnover or of its resources or its balance-sheet total.

The issue also creates an obligation for the association to convene a general meeting of its members at least once each year within six months of the close of the previous accounting period in order to approve the annual accounts which are published as established by decree.

Where, due to cumulative losses shown in the accounting records, the equity capital has been reduced by more than one half relative to the amount thereof at the end of the accounting period preceding that of the issue, a general meeting must also be convened within four months of approval of the accounts which recorded those losses for the purpose of deciding whether the association's business should continue or whether it should be dissolved.

If the association is not dissolved, it is required to rebuild its equity capital by the close of the second accounting period following that in which the cumulative losses appeared in the accounts, at the latest.

In either case, the resolution adopted by the general meeting is published in the Trade and Companies Register.

Should a general meeting not take place, as in the case of it being unable to validly deliberate, the association shall lose the right to issue new instruments, and any holder of instruments already issued may apply to the court for immediate redemption of the entire issue. These provisions likewise apply in the event of an association which has decided not to dissolve itself failing to comply with the obligation to rebuild its equity capital within the time limit stipulated in the fifth paragraph of this article.

The court may allow the association a period of six months in which to regularise its situation; it cannot order immediate redemption if that regularisation has taken place by the day on which it rules on the merits.

*Amended by Order No. 2009-80 of 22 January 2009 Art. 2 Official Journal of 23 January 2009*

Article L. 213-16. - The decision to issue bonds is taken by the general meeting of the association's members on a reasoned

proposal from the management. The meeting also determines the amount of the issue, its placement range, the instruments' subscription price and interest or the procedures for determining those elements. It may delegate to the management, for a period not exceeding five years, the power to decide the other particulars of the issue, which, unless otherwise decided, may be executed as one process or in several tranches.

The meeting deliberates on all matters relating to the issue on the basis required for an amendment to the constitutional documents.

Article L. 213-17. - The provisions of Articles L. 213-5 and L. 213-6 of this code, and Articles L. 228-1, L. 228-5, L. 228-43 to L. 228-89, L. 242-10, L. 245-9 to L. 245-12, and L. 245-13 to L. 245-17(1) of the Commercial Code apply to bonds issued by associations.

The provisions referred to in the previous paragraph relating to a company's Board of Directors, Executive Board or managers are applicable to associations which issue bonds and govern the individuals or structures which are responsible for administration pursuant to the constitutional documents.

Those which relate to a company's Supervisory Board or to its members apply, if there is one, to the supervisory collegiate body and its members.

*Amended by Order No. 2004-604 of 24 June 2004 Art. 52 Official Journal of 17 April 2004*

NB (1): Articles L. 245-10 and L. 245-14 of the Commercial Code have been repealed by Article 134 I of Act No. 2003-706 of 1 August 2003.

Article L. 213-18. - The provisions of Articles L. 237-1 to L. 237-31 of the Commercial Code are applicable in the event of the winding-up of the issuing association, without prejudice to the provisions of the Act of 1 July 1901 relating to association agreements and of Articles 21 to 79 of the Local Civil Code applicable in the *départements* of Bas-Rhin, Haut-Rhin and Moselle.

Article L. 213-18-1. - The managers of associations that issue bonds are subject to the incapacities referred to in Article L. 500-1.

*Inserted by Order No. 2005-429 amending the Monetary and Financial Code Art. 4 Official Journal of 7 May 2005*

Article L. 213-19. - The responsibility of the members of the management, administrative or supervisory structures of associations is as described in Article L. 225-251, the second paragraph of Article L. 225-253, and Articles L. 225-254 and L. 225-257 of the Commercial Code, as applicable.

Where a professional organisation issues bonds and fulfills the criteria stipulated in Article L. 612-2 of the Commercial Code, the provisions of Article L. 642-3 of this Code shall be applicable to its managers.

*Amended by Order No. 2000-1223 of 14 December 2000, rectifying*

*Amended by Order No. 2009-80 of 22 January 2009 Art. 2 Official Journal of 23 January 2009*

Article L. 213-20. - Associations registered with the Trade and Companies Register as stipulated in this subsection may form groups to issue bonds.

This entails the creation of an economic interest group as stipulated in the second paragraph of Article L. 251-7 of the Commercial Code.

Economic interest groups created by associations in order to issue bonds are obligated in regard to the redemption and yield of those bonds. Such economic interest groups have, vis-à-vis the associations from which they are constituted and that benefited from a fraction of the proceeds of the issue, rights identical to those conferred on the holders of bonds issued by associations by Articles L. 213-15, L. 213-17 and L. 213-19.

The provisions of Articles L. 213-19 and L. 231-2 are applicable to the executives of economic interest groups created by associations in order to issue bonds.

The provisions of the first paragraph of Article L. 213-15 and of Article L. 213-17 are applicable to such groups.

Article L. 213-21. - A decree issued following consultation with the Conseil d'Etat determines this subsection's implementing provisions, as necessary.

### Section 3 Securities issued by the government

Article L. 213-21-1. - Any owner of financial securities issued by the Government that are part of an issue that includes both financial securities entered in an account kept by an intermediary referred to in Article L. 211-3 and financial securities entered in an account kept by the Government has the right to request a change in the account entry methods of his securities.

*Replaced by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

#### Subsection 1 Government loans

Article L. 213-22. - The face amount of matured coupons detached prior to presentation for redemption cannot be claimed from the holders of debt securities redeemed, issued or managed by the Government.

Only the interest corresponding to any missing coupons maturing after the date of presentation are deducted from the capital repaid.

#### Subsection 2 Treasury bills

Article L. 213-23. - Credit institutions and investment firms must deposit the Treasury bills which belong to them with the Banque de France if the total par value of those bonds exceeds 750 euros.

*Amended by Supplementary Budget Act No. 2001-1276 of 28 December 2001 Art. 51 III Official Journal of 29 December 2001*

Article L. 213-24. - The Banque de France shall open a current account for bills in its books in the name of each depositing institution or individual, arranged by order of maturity.

Article L. 213-25. - The subscriptions made by the current-account holders shall give rise to a credit entry in their account equal to the face amount of the bonds subscribed, without physical delivery of a certificate.

Article L. 213-26. - The Trésor shall open a current account for bills in its books in the name of the Banque de France in which all deposits and withdrawals are entered along with the bill subscription and redemption transactions processed through the current accounts maintained by the Banque de France.

Article L. 213-27. - The current-account entries for bills may be the subject of transactions in the same way as bonds.

The said entries are freely transferable.

Article L. 213-28. - Transfer instructions are exempt from stamp duty.

Article L. 213-29. - A stop may not be placed on a current account for bills.

Article L. 213-30. - The list of institutions or individuals referred to in Article L. 213-23 may be extended by decree on the basis of a report from the Minister for the Economy.

The Banque de France may allow institutions or individuals not referred to in Article L. 213-23 to open a current account for bills in its books. Such accounts are automatically subject to the provisions of Articles L. 213-23 to L. 213-31.

Article L. 213-31. - Without prejudice to the penalties which may be applied by the Autorité de Contrôle Prudentiel for offences against the banking regulations, any breach of the obligations deriving from Article L. 213-23 shall result in the loss of the interest accrued on the value of the bills that were not deposited during the period in which they were illegally held.

*Amended by Order No.2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

### Section 4 Equity-like securities

Article L. 213-32. - Public-sector joint-stock companies, limited liability cooperative societies, mutual or cooperative banks and State-owned public institutions of an industrial and commercial nature may issue equity-like securities as provided for in Articles L. 228-36 and L. 228-37 of the Commercial Code.

Article L. 213-33. The rules relating to the issuance of equity-like securities by insurance companies are established in Article L. 322-2-1 of the Insurance Code.

Article L. 213-34. - The rules relating to the issue of equity-like securities by agricultural cooperative societies and their unions are established in Article L. 523-8 of the Rural Code.

Article L. 213-35. - A decree shall determine the provisions relating to the issue of, and the return on, the securities issued by the mutual or cooperative banks and public institutions of an industrial and commercial nature, as necessary.

## Chapter IV Collective Investment Undertakings

Article L. 214-1. I. - Collective investment undertakings include:

1. Collective investment schemes
2. Securitisation schemes
3. Real-estate investment companies
4. Forestry investment companies
5. Real-estate collective investment schemes
6. Closed-ended investment companies

II. Prior to being marketed in France, any collective investment scheme or investment fund set up under foreign law, with the exception of closed-ended funds, must have received approval from the Autorité des Marchés Financiers. The conditions for granting such authorisation are defined by decree.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 III 1° Official Journal of 2 August 2003*

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 73 Official Journal of 7 May 2005*

*Amended by Order No. 2005-1278 of 13 October 2005 Art. 1 Official Journal of 14 October 2005*

*Amended by Act. No. 2006-387 of 31 March 2006 Art. 26 Official Journal of 1 April 2006*

*Amended by Order No. 2008-556 of 13 June 2008 Art. 16 Official Journal of 14 June 2008*

*Amended by Order No. 2008-1081 of 23 October 2008 Art. 1 Official Journal of 24 October 2008*

*Amended by Order No. 2009-107 of 30 January 2009 Art. 1 Official Journal of 31 January 2009*

### Section 1 Collective Investment Schemes (Organismes de placement collectif en valeurs mobilières)

#### Subsection 1 Provisions Applicable to all Collective Investment Schemes

Article L. 214-2. - Collective investment schemes take the form of either SICAVs or common funds (*fonds communs de placement*, FCP).

Collective investment schemes may deal with various categories of units or shares in conditions determined respectively by the fund's regulations or by the SICAV's constitutional documents, in keeping with the General Regulation of the Autorité des Marchés Financiers.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 62 Official Journal of 2 August 2003*

Article L. 214-3. - The formation, conversion, merger, demerger or liquidation of a collective investment scheme is subject to authorisation from the Autorité des Marchés Financiers.

Collective investment schemes, depositaries and management companies must act for the exclusive benefit of the subscribers. They must provide adequate guarantees in respect of their organisation, their technical and financial resources, and the respectability and experience of their managers. They must take

the necessary steps to ensure the security of the transactions. The entities referred to in Articles L. 214-15, L. 214-16 and L. 214-24 must act independently.

The Autorité des Marchés Financiers may withdraw its authorisation from any collective investment scheme.

*Amended by Act No. 2003-706 of 1 August 2003 Article 46 V 1° and 2° Official Journal of 2 August 2003*

Article L. 214-3-1. - Under the conditions set forth in the General Regulation of the Autorité des Marchés Financiers, the responsibility vis-à-vis third parties for centralising subscription and redemption orders for units and shares in collective investment schemes shall be assigned by the collective investment schemes or, if applicable, by the portfolio management company that represents it, to the said scheme, or to the depositary, or to a portfolio management company, or to an investment services provider authorised to provide one of the services referred to in Article L. 321-1.

The entity to whom this responsibility has been assigned must have adequate and appropriate resources.

A subscription or redemption order transmitted to the entity responsible for centralising orders, on the date and under the conditions defined by the General Regulation of the Autorité des Marchés Financiers, shall be irrevocable.

*Inserted by Act No. 2010-1249 of 23 October 2010 Art. 26 Official Journal of 23 October 2010*

Article L. 214-4. - Under conditions and within limits established by a decree issued following consultation with the Conseil d'Etat, the assets of a collective investment scheme shall consist of:

- a) Financial instruments within the meaning of Article L. 211-1
- b) Deposits placed with French or foreign credit institutions
- c) Subsidiarily, cash.

Open-ended investment companies may own the real property which is necessary for their business.

A collective investment scheme cannot invest more than 5% of its assets in the securities of a single issuer. A decree issued following consultation with the Conseil d'Etat shall determine the circumstances and the categories of securities in respect of which this limit may be exceeded.

A collective investment scheme may lend and borrow securities and borrow cash within the limit of a fraction of its assets. In the case of cash borrowing, this limit cannot exceed 10% of the assets.

A collective investment scheme cannot hold more than 10% of a single category of financial securities of a single issuer. A decree issued following consultation with the Conseil d'Etat shall determine the categories of transferable securities and the circumstances in respect of which this limit may be exceeded. This threshold is increased to 25% when the issuer is a socially-conscious companies within the meaning of Article L. 443-3-1 of the Labour Code.

*Amended by Act No. 2001-152 of 19 February 2001 Art. 19 IV Official Journal of 20 February 2001*

*Amended by Order No. 2009-916 of 19 September 2000 Art. 1 I Official Journal of 22 September 2000*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 58 1° Official Journal of 2 August 2003*

*Amended by Act No. 2006-1770 of 30 December 2006 Art. 37 Official Journal of 31 December 2006*



*Amended by Act No. 2008-7760 of 4 August 2008 Art. 81 Official Journal of 5 August 2008*

*Amended by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

*Amended by Act No. 2009-526 of 12 May 2009 Art. 138 Official Journal of 13 May 2009*

Article L. 214-5. - Units in securitisation schemes may not be held above a percentage established by decree:

1. By a common fund whose management company is placed under the control, within the meaning of Article L. 233-3 of the Commercial Code, of a credit institution which has assigned its debts to the scheme

2. By a SICAV whose executives and employed managers are answerable to a credit institution which has assigned its debts to the scheme

*Amended by Act No. 2009-526 of 12 May 2009 Art. 138 Official Journal of 13 May 2009*

Article L. 214-6. - Creditors whose claim arises from the custody or management of the assets of a SICAV or a common fund may claim against those assets only.

A depositary's creditors cannot sue for payment of their debts against the assets of a SICAV or a common fund for which it provided custody.

Article L. 214-7. - A collective investment scheme may enter into contracts to create financial futures within limits and under conditions determined in a decree issued following consultation with the Conseil d'Etat.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 59 1° Official Journal of 2 August 2003*

Article L. 214-8. - The rules of a common fund and the constitutional documents of a SICAV determine their accounting periods, which shall not exceed twelve months. The first accounting period may nevertheless be of a different duration, but shall not exceed eighteen months.

Within six weeks of the end of each half-year of the accounting period, the SICAV or the management company shall draw up an inventory of the assets that it manages, under the depositary's supervision.

Such entities shall be required to publish details of their asset structure within eight weeks of the close of each half-year of the accounting period. The auditor shall certify the accuracy thereof before publication. Upon expiry of that period, any shareholder or unitholder who so requests shall be entitled to see the document.

Thirty days at least before the general meeting called to approve them, the SICAV shall also be required to publish its profit and loss account and its balance sheet. It shall be exempted from publishing them again after the general meeting, unless that meeting has amended them.

Article L. 214-9. - The net profit or loss of a collective investment scheme is equal to the amount of the interest, arrears, premiums and batches, dividends, attendance fees and all other income relating to the securities that make up the portfolio, plus the income from the sums then currently available, less the amount of the management fees and charges on borrowings.

Article L. 214-10. - The sums that are available for distribution by a collective investment scheme are equal to the net profit or loss plus the retained earnings and plus or minus the

balance shown in the asset-liability adjustment account for the income relating to the previous accounting period.

The sums that are available for distribution shall be paid within five months of the close of the accounting period.

Article L. 214-11. - As an exception to the provisions of the first paragraph of Article L. 123-22 of the Commercial Code, the accounts of a collective investment scheme may be maintained in any currency unit, as established by decree.

Article L. 214-12. - The Autorité des Marchés Financiers shall stipulate how and when collective investment schemes must provide information to their subscribers, and likewise the position in relation to advertising, and audiovisual advertising in particular, and direct marketing.

The constitutional documents and regulations of collective investment schemes, as well as disclosure documents for holders of units or shares, shall be written in French. Nevertheless, under conditions established by the General Regulation of the Autorité des Marchés Financiers, they may be written in a language widely used in financial dealings other than French, provided that this language is understandable by the investors for whom the information is intended.

In their annual report and in disclosure documents intended for their subscribers, open-ended investment companies and management companies must state the ways in which their investment policies take into account criteria for meeting social, environmental and quality-of-governance goals. They shall stipulate the nature of the criteria and how these criteria are applied, using a manner of presentation that is established by decree. They shall indicate how they exercise the voting rights attached to the financial instruments that result from these choices.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 51 Official Journal of 2 August 2003*

*Amended by Order No. 2008-1081 of 23 October 2008 Art. 1 Official Journal of 24 October 2008*

*Amended by Order No. 2010-788 of 12 July 2010 Art. 224 Official Journal of 13 July 2010*

Article L. 214-13. - Collective investment schemes must provide the Banque de France with the information it needs to compile the monetary statistics.

Article L. 214-14. - Where it has knowledge of a breach of the provisions of this Code committed by an auditor of a portfolio management company or of a collective investment scheme, or where it considers that the conditions of independence necessary for the proper execution of that auditor's mission are not met, the Autorité des Marchés Financiers may ask the competent court to relieve him of his duties as envisaged in Article L. 823-7 of the Commercial Code.

The Autorité des Marchés Financiers may also report the breach to the relevant disciplinary authority. To which end, the Autorité des Marchés Financiers may provide any information which that authority might require.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 V 1° Official Journal of 2 August 2003*

*Amended by Order No. 2005-1126 of 8 September 2005 Art. 22 Official Journal of 9 September 2005*

## Subsection 2 Provisions applicable to open-ended investment companies

Article L. 214-15. - An open-ended investment company, known as a "SICAV", is a public limited company whose purpose is the management of a portfolio of financial instruments and deposits.

Subject to the provisions of Article L. 214-19, SICAV shares may be issued and redeemed by the company at any time at the request of the shareholders at their net asset value plus or minus the fees and commissions, as applicable.

These shares may be admitted to trading on a regulated market as established by decree.

The amount of the capital is equal at any time to the value of the company's net assets after deduction of the sums available for distribution indicated in Article L. 214-10.

The initial capital of a SICAV cannot be below an amount established by decree.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 1° and Art. 59 1°, 5° Official Journal of 2 August 2003*

*Amended by Order No. 2007-544 of 12 April 2007 Art. 1 Official Journal of 13 April 2007*

Article L. 214-16. - A SICAV's assets are held by a single depositary separate from the company and chosen from a list of legal entities drawn up by the Minister for the Economy. The name of said depositary is included in the SICAV's constitutional documents. Its registered office must be in France. It ensures the legitimacy of the SICAV's decisions.

Its responsibility is not affected by the fact of it entrusting some or all of the assets in its custody to a third party.

Article L. 214-17. - As an exception to the provisions of Parts II and III of Book II and Part II of Book VIII of the Commercial Code:

1. The shares are fully paid-up upon issue
2. Any contribution in kind is valued by the auditor under his own responsibility
3. An ordinary General Meeting may be held without a quorum being required; the same applies to a reconvened extraordinary General Meeting
4. An individual may simultaneously hold five appointments as general manager, Executive Board member or sole general manager of SICAVs having their registered office in France. Remits as general manager, Executive Board member or sole general manager of a SICAV are not taken into account for the calculation of plurality of offices referred to in Book II of the Commercial Code.
- 4 bis. Appointments as a legal entity's permanent representative on a SICAV's Board of Directors or Supervisory Board are not taken into account for the purposes of Articles L. 225-21, L. 225-77 and L. 225-94-1 of the Commercial Code
5. The auditor is appointed for six accounting periods by the Board of Directors or the Executive Board with the consent of the Autorité des Marchés Financiers. The appointment of a substitute auditor is not required.

The auditor is released from professional secrecy in relation to the Autorité des Marchés Financiers.

The auditor is required to report to the Autorité des Marchés Financiers, as soon as possible, any fact or decision concerning an open-ended investment company which he has become aware of in the performance of his duties and which might:

a) Constitute a breach of the laws or regulations applicable to that company and be likely to have significant effects on its financial situation, profits or assets

b) Jeopardise its continued operation

c) Give rise to the issuing of reservations or a refusal to certify the accounts

The auditor shall not incur liability through having provided information or disclosed facts pursuant to the obligations imposed by this article.

The Autorité des Marchés Financiers may also send the auditors of open-ended investment companies information they require in order to perform their duties. The information thus provided is covered by the rules of professional secrecy.

6. Payment of the profits available for distribution must take place within one month of the General Meeting which approved the accounts for the period

7. An extraordinary General Meeting that decides on a conversion, merger or demerger empowers the Board of Directors or the Executive Board to value the assets and shall determine the share-for-share exchange parity on a date which it sets; this procedure shall take place under the supervision of the auditor without there being any requirement to appoint an auditor for the merger; the General Meeting shall be exempted from approving the accounts if they are certified by the auditor

8. In the event of a capital increase, the shareholders do not have any preferential subscription right in respect of the new shares

9. The valuation of contributions in kind shall be recorded in the constitutional documents on the basis of a report appended thereto which the auditor draws up under his own responsibility

The constitutional documents cannot provide for specific advantages

10. The annual General Meeting is held within four months of the close of the accounting period

11. The open-ended investment company's registered office and principal administrative establishment are located in France.

*Amended by Act No. 2000-21303 of 29 October 2002 Part. 3 I, II Official Journal of 30 October 2002*

*Amended by Act No. 2003-706 of 1 August 2003 Article 46 V 1° and 2° Official Journal of 2 August 2003*

*Amended by Order No. 2005-1126 of 8 September 2005 Art. 21 Official Journal of 9 September 2005*

*Amended by Order No. 2008-1081 of 23 October 2008 Art. 1 Official Journal of 24 October 2008*

Article L. 214-18. - The provisions of Order No. 45-2710 of 2 November 1945 relating to investment companies, and Articles L. 224-1, L. 224-2, L. 225-3 to L. 225-16, L. 225-25, L. 225-26, L. 225-258 to L. 225-270, L. 231-1 to L. 231-8, L. 233-8, L. 242-31 and L.247-10 of the Commercial Code, are not applicable to SICAVs.

Cross-border mergers of the companies referred to in this subsection are not governed by Articles L. 236-25 to L. 236-32 of the Commercial Code.

*Amended by Act No. 2008-649 of 3 July 2008 Art. 2 Official Journal of 4 July 2008*

*Amended by Order No. 2008-1081 of 23 October 2008 Art. 1 Official Journal of 24 October 2008*

Article L. 214-19. - Redemption by the company of its shares, and also the issue of new shares, may be provisionally suspended by the Board of Directors or the Executive Board, pursuant to the company's constitutional documents, in exceptional circumstances and if the shareholders' interests demand it.

Under the same circumstances, where the transfer of certain assets is not in the shareholders' interest, these assets may be transferred into a new SICAV. In accordance with Article L. 236-6 of the Commercial Code, a demerger shall be decided by an extraordinary General Meeting of the SICAV's shareholders. As an exception to the provisions of Article L. 225-96 of the Commercial Code, the meeting may be held without a quorum. As an exception to Article L. 214-3, this demerger shall not be subject to approval from the Autorité des Marchés Financiers, but it must be declared to it without delay. Each shareholder shall receive the same number of shares in the new SICAV as he held in the old one. The newly-created SICAV may not issue new shares. Its shares shall be amortised as its assets are transferred. The conditions for application of this paragraph shall be provided for by decree.

The General Regulation of the Autorité des Marchés Financiers shall determine the other cases in which a SICAV's constitutional documents may provide, when necessary, for the issue of shares to cease, provisionally or permanently, and the conditions applicable thereto.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 59 2° Official Journal of 2 August 2003*

*Amended by Order No. 2008-1081 of 23 October 2008 Art. 1 Official Journal of 24 October 2008*

### Subsection 3 Specific rules applicable to common funds (Fonds communs de placement)

Article L. 214-20. - Subject to the provisions of the second paragraph of Article L. 214-30, a common fund (*fonds commun de placement*, FCP), which does not have legal personality, is a co-ownership of financial instruments and deposits whose units are issued and redeemed at the request of the holders at their net asset value plus or minus the fees and commissions, as applicable. The provisions of the Civil Code that relate to joint ownership do not apply to FCPs, and nor do those of Articles 1871 to 1873 of that same code that relate to holding companies.

Units may be admitted to trading on a regulated market under conditions established by decree.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 V 1° and Art. 59 3°, 6° Official Journal of 2 August 2003*

*Amended by Order No. 2007-544 of 12 April 2007 Art. 1 Official Journal of 13 April 2007*

Article L. 214-21. - In all cases in which provisions relating to companies and financial securities require that the surname, forenames and address of the holder of the security be indicated, and also in the case of all transactions carried out on behalf of the co-owners, the name of the common fund may be validly substituted for those of all the co-owners.

*Amended by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 214-22. - The unitholders or their assigns cannot initiate the division of the fund.

Article L. 214-23. - The unitholders are liable for the co-ownership's debts only within the limits of the fund's assets and in proportion to their own share.

Article L. 214-24. - An FCP is created at the joint initiative of a portfolio management company, which is responsible for its management, and of a legal entity acting as depositary of the fund's assets.

That company and that legal entity shall establish the fund's regulations.

The subscription or purchase of an FCP's units entails acceptance of the rules.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 68 I a Official Journal of 2 August 2003*

Article L. 214-25. - The FCP is represented in regard to third parties by the company responsible for its management. That company may bring legal proceedings to defend or assert the unitholders' rights or interests.

The management company's registered office and principal administrative establishment shall be located in France.

*2 paragraphs deleted as of 13 February 2004 Act No. 2003-706 of 1 August 2003 Art. 68 I b Official Journal of 2 August 2003*

Article L. 214-26. - The fund's regulations must provide for its assets to be kept by a single depositary separate from the fund's management company which ensures the legitimacy of the company's decisions.

That depositary is chosen by the management company from a list drawn up by the Minister for the Economy.

Its responsibility is not affected by the fact of it entrusting some or all of the assets in its custody to a third party.

Its registered office must be in France.

Article L. 214-27. - The minimum asset value that the fund must have upon its formation is established by decree.

The assets shall be valued on the basis of a report drawn up by the auditor, as established by decree. The value of the contributions in kind shall be verified by the auditor, who draws up a report thereon under his own responsibility.

Article L. 214-28. - The management company or the depositary are individually or jointly liable, as applicable, towards third parties or unitholders, for any violation of the laws or regulations applicable to common funds, for any breach of the fund's regulations, and for any wrongful act.

Article L. 214-29. I. - The fund's auditor shall be appointed by the management company's manager, Board of Directors or Executive Board with the consent of the Autorité des Marchés Financiers.

The fund's unitholders shall exercise the rights vested in shareholders by Articles L. 823-6 et L. 823-7 of the Commercial Code.

The auditor shall inform the management company's General Meeting of any irregularities or inaccuracies he uncovered in the performance of his duties.

II. - The auditor is released from professional secrecy in relation to the Autorité des Marchés Financiers.

The auditor is required to report to the Autorité des Marchés Financiers, as soon as possible, any fact or decision concerning the fund which he has become aware of in the performance of his duties and which might:

1. Constitute a violation of the fund likely to have significant effects on its financial situation, profits or assets

2. Jeopardise its continued operation or the conditions thereof

3. Give rise to the issuing of reservations or a refusal to certify the accounts

The auditor shall not incur liability through having provided information or disclosed facts pursuant to the obligations imposed by this article.

The Autorité des Marchés Financiers may also send the fund's auditors information they require in order to perform their duties. The information thus provided is covered by the rules of professional secrecy.

The appointment of an alternate auditor is not required.

*Amended by Act No. 2003-706 of 1 August 2003 Article 46 V 1° and 2° and Article 116 Official Journal of 2 August 2003*

*Amended by Order No. 2005-1126 of 8 September 2005 Art. 21 and 22 Official Journal of 9 September 2005*

*Amended by Order No. 2008-1081 of 23 October 2008 Art. 1 Official Journal of 24 October 2008 - The provisions of 6° and 7° of Article 1 are immediately applicable to organisations founded at the date of the publication of the decrees respectively called for by these provisions.*

Article L. 214-30. - Redemption by the fund of its units, and the issue of new units, may be provisionally suspended by the management company, pursuant to the fund's regulations, in exceptional circumstances and if the unitholders' interests demand it.

Under the same circumstances, where the transfer of certain assets is not in the shareholders' interest, these assets may be transferred into a new fund. A demerger shall be decided by the management company. As an exception to Article L. 214-3, this demerger shall not be subject to approval from the Autorité des Marchés Financiers, but it must be declared to it without delay. Each unitholder shall receive the same number of units in the new fund as he held in the old one. The newly created fund may not issue new units. Its units shall be amortised as its assets are transferred. The conditions for application of this paragraph shall be provided for by decree.

The General Regulation of the Autorité des Marchés Financiers shall determine the other cases in which a fund's regulations may provide, where necessary, for the issue of units to cease, provisionally or permanently, and the conditions applicable thereto.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 59 4° Official Journal of 2 August 2003*

*Amended by Order No. 2008-1081 of 23 October 2008 Art. 1 Official Journal of 24 October 2008*

Article L. 214-31. - The conditions of liquidation and the arrangements for dividing up the assets shall be determined by the fund's rules. The depositary, or, if appropriate, the management company, acts as the liquidator, failing which a liquidator is appointed by the court at the request of any unitholder.

Article L. 214-32. - I. - The management company is required to make the declarations stipulated in Article L. 233-7 of the Commercial Code in respect of all the shares held by the common funds it manages.

II. - The provisions of Articles L. 233-14 and L. 247-2 of the Commercial Code are applicable.

#### Subsection 4 Collective investment schemes with subfunds

Article L. 214-33. I. - A collective investment scheme may have two or more subfunds if its constitutional documents or its rules so provide. Each subfund gives rise to the issue of a category of shares or units which represent the assets of the collective investment scheme which are allocated to it. As an exception to Article 2285 of the Civil Code and unless otherwise stipulated in the collective investment scheme's constitutional documents, the assets of a given subfund may only be used to meet that subfund's debts, commitments and obligations and only benefit from that subfund's receivables.

Where subfunds are created in a venture capital fund, an innovation fund, a futures fund or a collective investment scheme registered via the fast-track procedure, they are all individually subject to the provisions of this Code which govern that fund or that scheme.

The Autorité des Marchés Financiers shall determine the conditions each subfund must meet in order to receive approval, as well as the conditions for determining the cash-in value of each category of shares or units on the basis of the net asset value allocated to the corresponding subfund.

II. - Separate accounts are maintained in the collective investment scheme's books for each subfund and may be recorded in any currency unit, as provided for in the decree referred to in Article L.214-11.

III. - As an exception to the provisions of Article L. 214-4, a subfund may be governed by the provisions relating to feeder funds stipulated in Article L. 214-34.

IV - The Autorité des Marchés Financiers shall approve any conversion, merger, demerger or liquidation of a subfund, under conditions which it determines.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 1° and 2° and Art. 60 1° Official Journal of 2 August 2003*

*Amended by Order No. 2006-346 of 23 March 2006 Official Journal of 24 August 2006*

#### Subsection 5 Master funds and feeder funds

Article L. 214-34. - I. - The constitutional documents or rules of a feeder fund may provide, under conditions set forth in the General Regulation of the Autorité des Marchés Financiers, for the entirety of its assets to be invested in the shares or units of a single collective investment scheme, known as a master fund, and, subsidiarily, in cash.

II. - A master fund is:

1. A common-law collective investment scheme governed by subsections 1, 2, 3 and 4 of Section 1 of this Chapter; or

2. A venture capital fund, an innovation fund or a futures fund; feeder funds are then subject to the rules relating to holdings, marketing, advertising and direct marketing that apply to the master fund; or

3. A collective investment scheme reserved for certain investors governed by Subsection 9 of this section. In this case, the rules applicable to the feeder fund's investment holdings, direct marketing and marketing are those that apply to the master fund; or

4. A collective investment scheme subject to the laws of a State which benefits from the mutual recognition of approvals procedure specified by Council Directive 85/611 of 20 December 1985, provided that those laws allow:

a) The creation and marketing of feeder funds whose assets consist of the units or shares in a collective investment scheme established in France

b) Information exchanges as indicated in III of this article



c) An agreement covering exchanges of information and assistance to be entered into with the authority responsible for supervising collective investment schemes.

The General Regulation of the Autorité des Marchés Financiers shall specify the implementing legislation for this paragraph II.

III. - The depositaries and auditors of the feeder funds and the master fund exchange the information that is necessary for accomplishment of their respective duties.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 1°, 2°, Art. 63 VI Official Journal of 2 August 2003*

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 24 and 109 Official Journal of 7 May 2005*

### Subsection 6 Collective investment schemes that invest in shares or units of other collective investment schemes or investment funds

*Subsection inserted by Order No. 2005-429 amending the Monetary and Financial Code Art. 24 Official Journal of 7 May 2005*

### Subsection 7 Formula funds

*Subsection inserted by Order No. 2005-429 amending the Monetary and Financial Code Art. 24 Official Journal of 7 May 2005*

### Subsection 8 Index-linked funds

*Subsection inserted by Order No. 2005-429 amending the Monetary and Financial Code Art. 24 Official Journal of 7 May 2005*

### Subsection 8 Collective investment schemes reserved for certain investors

*(subsection heading modified by Financial Security Act No. 2003-706 Art. 63 Official Journal of 2 August 2003 and subsection number amended by Order No. 2005-429 modifying the Monetary and Financial Code Art. 24 Official Journal of 7 May 2005)*

Article L. 214-34-1. - As an exception to Articles L. 214-16 and L. 214-26 and under the conditions defined in the scheme's constitutional documents or rules, an agreement concluded between the depositary and scheme covered by this subsection, or its management company, may define the obligations that remain the responsibility of the depositary under the terms of the service referred to in paragraph 1 of Article L. 321-2.

The conditions of this article shall be established by decree.

*Inserted by Order No. 2008-1081 of 23 October 2008 Art. 2 Official Journal of 24 October 2008*

### Paragraph 1 Collective investment schemes with streamlined investment rules

*The subsection and its heading were deleted by 1° of II of Article 48 of Financial Security Act No. 2003-706 Official Journal of 2 August 2003*

Article L. 214-35. - A collective investment scheme with streamlined investment rules may depart from Article L. 214-4 under conditions and within limits established by a decree issued following consultation with the Conseil d'Etat.

The General Regulation of the Autorité des Marchés Financiers shall determine the terms of subscription, transfer and redemption for the units or shares issued by such schemes.

As an exception to the second paragraph of Article L. 214-15 and the first paragraph of Article L. 214-20, the rules or constitutional documents of the contractual collective investment scheme with streamlined investment rules may, for each date of establishment of the net asset value, set a ceiling for the redemption of units or shares equal to a fraction of the units or shares issued by the scheme. The implementing conditions of this article shall be established by decree.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 63 I Official Journal of 2 August 2003*

*Amended by Order No. 2008-1081 of 23 October 2008 Art. 1 Official Journal of 24 October 2008 - The provisions of 2° of Article 2 are immediately applicable to funds founded at the date of the publication of the decrees respectively called for by these provisions.*

Article L. 214-35-1. - Units or shares in a collective investment scheme with streamlined investment rules may be subscribed and purchased only by qualified investors within the meaning of the penultimate paragraph of Article L. 411-2 and by foreign investors belonging to an equivalent category under the law of the country in which its registered office is located.

The General Regulation of the Autorité des Marchés Financiers shall determine the conditions under which the units or shares in such schemes may be subscribed or purchased by other investors in keeping, *inter alia*, with the nature thereof and the level of risk that the scheme presents.

The depositary or the person designated for that purpose in the scheme's rules or constitutional documents shall ensure that the subscriber or purchaser is an investor as described in the previous paragraph. He shall also ensure that the subscriber or purchaser has effectively declared that he was informed that the said scheme was governed by the provisions of this subsection.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 63 I Official Journal of 2 August 2003*

*Amended by Act No. 2005-842 of 26 July 2005 Art. 25 Official Journal of 27 July 2005*

### Paragraph 2 Contractual collective investment schemes

Article L. 214-35-2. - As an exception to the provisions of Articles L. 214-4, L. 214-15 and L. 214-20, a contractual collective investment scheme may invest in assets if the assets comply with the following rules:

a) Ownership of the asset is established, either by registration, an authentic instrument or a private deed whose validity is recognised under French law

b) The asset is not pledged as a security other than those established for the purposes of managing the organisation

c) The asset is subjected to reliable valuation in the form of a precisely-calculated and regularly updated price, which shall be either a market price, or a price supplied by a valuation system for determining the value at which the asset may be exchanged between informed contracting parties within the framework of a transaction carried out under normal competitive conditions

d) The liquidity of the asset allows the scheme to meet its obligations in terms of completing redemption with respect to its holders and shareholders as defined in its constitutional documents or rules.

As an exception to Articles L. 214-16, L. 214-24 and L. 214-26, the depositary of the contractual collective investment scheme shall hold only the assets referred to in Article L. 214-4. For other assets, he shall hold proof of their existence, supplied under the conditions listed in point a). The custodial account shall take the form of a SICAV or FCP.



Depending on the form taken, it shall be designated a "contractual investment company" or a "contractual investment fund" respectively.

As an exception to the provisions of Article L. 214-4, the rules or constitutional documents of the contractual collective investment scheme shall determine the rules of investment and commitment.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 63 I Official Journal of 2 August 2003*

*Amended by Order No. 2008-1081 of 23 October 2008 Art. 2 Official Journal of 24 October 2008*

Article L. 214-35-3. - The first and third paragraphs of Article L. 214-35-1 shall apply to contractual collective investment schemes. The General Regulation of the Autorité des Marchés Financiers shall determine the conditions under which the units or shares in such schemes may be subscribed or purchased by other investors in keeping, *inter alia*, with the nature thereof and the level of risk that the scheme presents.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 63 I Official Journal of 2 August 2003*

Article L. 214-35-4. - The formation, conversion, merger, demerger or liquidation of a contractual collective investment scheme is not subject to approval from the Autorité des Marchés Financiers, but must be declared to it as indicated in its General Regulation within one month of completion.

The General Regulation also determines how subscribers are informed of the investment rules specific to that scheme, including the ways in which it may depart from Article L. 214-4, as well as the periodicity and *modus operandi* of the net asset value calculation.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 63 I Official Journal of 2 August 2003*

Article L. 214-35-5. As an exception to the second paragraph of Article L. 214-15 and the first paragraph of Article L. 214-20, the rules or constitutional documents of the contractual collective investment scheme set out the terms and conditions of issue, subscription, transfer and redemption of units and shares.

The rules or constitutional documents of a contractual collective investment scheme stipulate the net asset value below which it must be dissolved.

The scheme's rules or constitutional documents also stipulate the terms and conditions applicable to any amendment thereof. Failing this, any amendment shall require a unanimous vote of the shareholders or unitholders.

II. - As an exception to paragraph 1 of Article L2 14-17, the rules or constitutional documents may stipulate a fractional paying-up of subscribed units or shares. These units or shares are in registered form. Where the units or shares are transferred, the subscriber and the successive transferees are jointly and severally liable for the amount that is not paid up. If the unitholder or shareholder should fail to pay the sums remaining due in respect of the units or shares held at the times specified by the management company and, where necessary, by the SICAV, the management company shall send him a formal demand. If the said demand is ineffective one month after its delivery, the management company and, where necessary, the SICAV, may transfer those units or shares without any authorisation from the court, or it may, under the conditions provided for in the organisation's constitutional documents or rules, suspend entitlement to the payment of the sums available for distribution referred to in Article L. 214-10. Once the principal and interest of the sums due have been paid, the shareholder or unitholder may request the payment of any unallocated sums available for distribution.

The rules or constitutional documents may provide for the management company or a third-party, under the conditions established by the rules or constitutional documents, to receive a portion of the assets in the event the scheme is liquidated.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 63 I Official Journal of 2 August 2003*

*Amended by Order No. 2008-1081 of 23 October 2008 Art. 2 Official Journal of 24 October 2008*

Article L. 214-35-6. Considering, *inter alia*, the manner in which such undertakings are managed, a contractual collective investment scheme may only be managed by a management company specially approved for that purpose as provided for in the General Regulation of the Autorité des Marchés Financiers.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 63 I Official Journal of 2 August 2003*

## Subsection 10 Venture capital funds (Fonds communs de placement à risques)

*Subsection number amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 24 Official Journal of 7 May 2005*

Article L. 214-36. - 1. At least 50% of the assets of a venture capital fund (*fonds commun de placement à risques*, FCPR) must consist of equity-like securities, equity securities or securities which give direct or indirect access to the capital of companies which are not admitted to trading on a French or foreign regulated market and whose operations are managed by a market undertaking, an investment service provider or any similar foreign entity, or, as an exception to Article L. 214-20, shares in limited liability companies or companies having an equivalent status in their State of residence.

2. The assets may also include:

a) Subject to a limit of 15%, current account advances granted to companies in which the fund holds at least 5% of the capital for the term of the investment made. Such advances are taken into account for calculation of the quota referred to in paragraph 1 when they are granted to companies that meet the conditions for inclusion in that quota;

b) Rights pertaining to a financial investment in an entity created in a Member State of the Organisation for Economic Cooperation and Development with the principal objective of investing in companies whose equity securities are not admitted to trading on a market indicated in paragraph 1. Such rights are included in the fund's investment quota of 50% only up to the percentage of the direct investment of the assets of the entity concerned in companies eligible for that same quota.

3. Equity securities, or securities giving access to the capital which are admitted to trading on a market indicated in paragraph 1 of a Member State of the European Economic Area and are issued by companies whose market capitalisation is below 150 million euros, are also eligible for the investment quota referred to in paragraph 1, subject to a limit of 20% of the fund's assets. The market capitalisation is evaluated on the basis of the average of the opening prices of the sixty trading days preceding the investment date. A decree issued following consultation with the Conseil d'Etat shall determine how the said evaluation shall be applied in the event, *inter alia*, of an initial listing or a company restructuring operation.

4. Where the securities of a company held by an FCPR are admitted to trading on a French or foreign financial instruments market whose operations are managed by a market undertaking, an investment service provider or any similar foreign entity, they continue to be included in the investment quota of 50% for a period of five years with effect from their admission. The five-

year period does not apply, however, if the securities of the company admitted to trading meet the conditions of paragraph 3 on the date of such admission and if the fund still complies with the limit of 20% referred to therein when the said securities are taken into account.

5. The investment quota of 50% must be met, at the very latest, by the time the year-end inventory takes place for the accounting period following the accounting period in which the FCPR was created, and must be maintained until the close of the fund's fifth accounting period.

6. A decree issued following consultation with the Conseil d'Etat shall determine the implementing regulations for the quota referred to in paragraph 5 in the event of the fund making further calls for capital or seeking further subscriptions. It shall also determine the valuation rules for the quota and the specific rules relating to the terms of purchase and transfer and the limits for the holding of assets.

7. Unitholders may not request redemption until a set period not exceeding ten years has expired. When the said period has elapsed, the unitholders may demand the fund's liquidation if their requests for redemption are not met within one year.

8. The units may give rise to different rights on the net assets or the income from the fund under conditions determined by the fund's regulations. Units may also be differentiated according to the provisions set forth in the second paragraph of Article L. 214-2.

9. The rules of an FCPR may provide for one or more fixed-term subscription periods. The management company may distribute a fraction of the assets only when the last subscription period has expired and only as established by decree.

10. The units of an FCPR may be transferred as soon as they are subscribed. If the units are not fully paid up, the subscriber and the successive transferees are jointly and severally liable for the amount which is not paid up. If the unitholder should fail to pay the sums remaining due in respect of the units held at the times specified by the management company, the latter shall send him a formal demand. If the said demand is ineffective one month after its delivery, the management company may transfer those units without any authorisation from the court. However, a subscriber or transferee who has transferred his units ceases to be liable for making the payments not yet called by the management company when two years have elapsed since the book transfer of the transferred units was effected.

11. The fund's rules may provide for the management company to receive a portion of the assets as determined in a decree issued following consultation with the Conseil d'Etat upon liquidation of the fund.

*Amended by Budget Act No. 2001-1275 of 20 December 2001 Art. 78 i a, b Official Journal of 29 December 2001.*

*Paragraph 1 of Article 38 of 2005 Budget Act No. 2004-1484 of 30 December 2004 Art. 38 Official Journal of 31 December 2004 amends Article L. 214-36.. Paragraph V of Article 38 stipulates that shall come into force with the elimination of the Nouveau Marché: the status of regulated market in financial instruments of the Nouveau Marché is withdrawn as of 21 February 2005 by Decree of 24 February 2005 relating to withdrawal of the status of regulated market in financial instruments of the Nouveau Marché Official Journal of 27 February 2005, p. 3608.*

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 25 Official Journal of 7 May 2005*

*Amended by Order No. 2005-1720 Art. 32 Official Journal of 31 December 2005*

*Amended by Act No. 2008-7760 4 August 2008 Art. 35 Official Journal of 5 August 2008*

Article L. 214-37. - The units of venture capital funds registered via the fast-track procedure may be subscribed for and purchased only by the investors referred to in Article L. 214-35-1 and by managers, employees or other individuals, acting on behalf of the management company, and by the management company itself. The creation, conversion, merger, demerger or liquidation of the fund is not subject to approval from the Autorité des Marchés Financiers, but it must be declared to it, as indicated in the Autorité's General Regulation, within one month of its completion.

The depositary or the person designated for that purpose in the fund's rules shall ensure that the subscriber or purchaser is an investor referred to in the previous paragraph. It shall also ensure that the subscriber or purchaser has effectively declared that he was informed that the said fund was governed by the provisions of this subsection.

The fund's assets may also include:

a) Subject to the limit of 15% referred to in paragraph 2a) of Article L. 214-36, current account advances granted to companies in which the fund holds a share of the capital for the term of the investment made. Such advances are taken into account for calculation of the quota referred to in paragraph 1 of Article L. 214-36 when they are granted to companies that meet the conditions for inclusion in that quota.

b) Rights pertaining to a financial investment issued on the basis of French or foreign law in an entity whose principal objective is investing directly or indirectly in companies whose equity securities are not admitted to trading on a market in financial instruments indicated in paragraph 1 of Article L. 214-36. Such rights are included in the fund's investment quota of 50% referred to in the same paragraph 1 only up to the percentage of the direct investment of the assets of the entity concerned in companies eligible for that same quota.

A decree issued following consultation with the Conseil d'Etat shall determine specific rules relating to the conditions and limits applicable to such funds' asset holdings.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 1°, 2° or 3, Art. 63 II Official Journal of 2 August 2003*

*Amended by Act No. 2008-7760 4 August 2008 Art. 35 Official Journal of 5 August 2008*

Article L. 214-38. - FCPRs that existed on 30 June 1999 and are not advertised or directly marketed follow the rules applicable to venture capital funds registered via the fast-track procedure, with the exception of the rules relating to investor status and those applicable to conversions, mergers, demergers and liquidations, unless each of the fund's unitholders expressly agrees to place such events under the scheme applicable to venture capital funds registered via the fast-track procedure.

Article L. 214-38-1. - A contractual venture capital fund is a venture capital fund that:

1° Invests, either directly or indirectly, in equity-like securities, equity securities or securities giving access to the capital of companies which are not admitted to trading on a market in financial instruments referred to in paragraph 1 of Article L. 214-36 or, as an exception to Article L. 214-20, in shares in limited liability companies or companies having an equivalent status in their State of residence

2° Or is exposed to a risk associated with such securities or shares via financial futures.

The assets may also include rights, issued under French or foreign law, pertaining to a financial investment in an entity as well as current-account advances granted to companies in which the fund holds a share for the term of the investment made. Contractual venture-capital funds may, in addition, within the limit of a percentage of their assets that is established by decree, acquire receivables on companies whose securities are not admitted to trading on a market in financial instruments referred to in paragraph 1 of Article L. 214-36.

They shall not be subjected to the quota stipulated in paragraph 1 of Article L. 214-36.

The first two paragraphs of Article L. 214-37 are applicable to contractual venture capital funds.

As an exception to the provisions of Article L. 214-4, the regulations of the contractual venture capital fund shall set the rules for investment and commitment.

As an exception to the provisions of the first paragraph of Article L. 214-20, they shall stipulate the terms and conditions for the redemption of units.

The regulations may provide for one or more fixed-term subscription periods.

They may also provide for the management company to receive a portion of the assets upon liquidation of the fund.

The management company may, pursuant to the fund's regulations, distribute a fraction of the assets.

Paragraphs 8 and 10 of Article L. 214-37 are applicable to contractual venture capital funds.

Innovation funds and local investment funds are not governed by this article.

*Inserted by Act No. 2008-7760 4 August 2008 Art. 35 Official Journal of 5 August 2008*

*Article L. 214-38-2. - Venture-capital funds registered via the fast-track procedure may only be placed under the scheme of contractual venture-capital funds with the express agreement of each unitholder.*

*Inserted by Act No. 2008-7760 4 August 2008 Art. 35 Official Journal of 5 August 2008*

## Subsection 11 Employee investment funds (Fonds communs de placement d'entreprise, FCPEs)

*(Subsection number amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 24 Official Journal of 7 May 2005)*

Article L. 214-39. - The rules of funds created to manage sums invested pursuant to **Part III of Book III of the third part of the Labour Code relating to employee saving schemes** call for the creation of a Supervisory Board and specify the cases in which the management company must seek guidance from that board.

The Supervisory Board is composed of employees representing the unitholders, who are themselves unitholders, and representatives of the company, occupying half of the seats at most. Where the fund holds securities bought with sums taken from the dividend reserves or paid into company savings schemes established in several companies, the rules shall determine, under conditions established by decree, the terms under which the firms are represented in the Supervisory Board and the representatives are appointed.

The rules stipulate the procedure for appointing the unitholders' representatives, either by election, or by a choice made by the works councils concerned or by the representative trade unions within the meaning of Article L. 2231-1 of the Labour Code.

The chairman of the Supervisory Board is chosen from among the unitholders' representatives.

Where the last paragraph of Article L. 3332-15 of that same code is applied, the rules refer to the provisions set forth in the savings scheme's rules.

The Supervisory Board exercises the voting rights attached to the fund's underlying assets and decides contributions of the securities. The rules may nevertheless stipulate that the management company shall exercise the voting rights attached to those securities and decide contributions thereof, save for the

company's own securities or those of any company affiliated to it within the meaning of Article L. 3344-1 and L. 3344-2 of the Labour Code. The Supervisory Board is required to examine the financial, administrative and accounting management and may consult the management company, the depositary and the fund's auditor, who are required to cooperate with it. It decides mergers, demergers and liquidations. The fund's rules specify all changes to the rules themselves which cannot be decided without the Supervisory Board's consent. Without prejudice to the management company's remit as described in Article L. 214-25, or that of the liquidator as described in Article L. 214-31, the Supervisory Board may initiate legal proceedings to defend or assert the unitholders' rights or interests.

The Supervisory Board approves an annual report which is made available to each unitholder, the content of which is specified in the General Regulation of the Autorité des Marchés Financiers.

The rules may require that:

1. The fund's assets be held by several depositaries
2. The income from the fund's assets be reinvested in the fund

The fund may only be wound up if its winding-up does not result in the loss of the advantages granted to the employees as determined in Article L. 225-194 of the Commercial Code (reference deleted) and in Articles L. 3324-10, L. 3323-4 and L. 3325-1 to L. 3325-4, L. 3332-14 and L. 3332-25 and L. 3332-26 of the Labour Code.

The provisions of this article apply to funds whose holdings of securities issued by the company or by any associated company within the meaning of Article L. 3344-1 and L. 3344-2 of the Labour Code do not exceed one third of its assets.

The rules stipulate, as applicable, the social, environmental and ethical considerations that the management company must respect when purchasing and selling securities and when exercising the rights attached to them. The fund's annual report details their application as prescribed by the Autorité des Marchés Financiers.

Where the company is governed by the provisions of Act No. 47-1775 of 10 September 1947 relating to the cooperative charter, the employee investment fund may invest in the equity securities that it issues, without prejudice to any specific provisions governing the subscription of such securities by the employees, and as established by decree.

**The provisions of this article are also applicable to socially responsible funds which may be subscribed within the framework of the employee savings plan referred to Part III of Book III of the third part of the aforementioned code.** The assets of such socially responsible funds consist of:

a) A portion of between 5% and 10% composed of securities issued by socially responsible companies approved pursuant to **Article L. 3332-17-1 of the Labour Code**, or by venture capital companies within the meaning of Article 1-1 of Act No. 85-695 of 11 July 1985 instituting various economic and financial provisions, or by venture capital funds as described in Article L. 214-36, subject to at least 40% of their assets consisting of securities issued by socially responsible companies within the meaning of **Article L. 3332-17-1 of the Labour Code**;

b) While the remainder consists of financial securities admitted to trading on a regulated market, units of collective investment schemes invested in those same securities and, subsidiarily, cash.

**The assets of socially responsible funds may, under the conditions established by Article L. 240-34 of this Code, be invested in the shares or units of a single collective investment scheme respecting the composition of the socially responsible fund.**



Not more than 5% of the assets of funds which may be subscribed within the framework of a company retirement savings plan may be invested in securities which are not admitted to trading on a regulated market, without prejudice to the provisions of point a) above, or in the securities of the company which established the plan or of companies associated with it within the meaning of Articles L. 3344-1 and L. 3344-2 of the Labour Code. This limitation does not apply to the units and shares of collective investment schemes held by the fund.

*Act No. 2001-152 of 19 February 2001 Art. 19 II, Art. 21, Art. 23 i 2 Official Journal of 20 February 2001*

*Act No. 2003-775 of 21 August 2003 Art. 109 IV Official Journal of 22 August 2003*

*2003 Budget Act No. 2003-1311 of 30 December 2003 Art. 82 IV Official Journal of 31 December 2003*

*Act No. 2006-1770 of 30 December 2006 Art. 22 II and 37 II Official Journal of 31 December 2006*

*Amended by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

NB: Articles L. 225-187 and L. 225-194 of the Commercial Code have been repealed by Article 29 4° of Act 2001-152 of 19 February 2001.

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 67 Official Journal of 23 October 2010*

Article L. 214-40. - The provisions of this article apply to funds having more than one third of their assets invested in securities issued by the company or by any company associated with it within the meaning of Article L. 3344-1 of the Labour Code.

The fund's rules stipulate the procedure for appointing this Board, and its composition, either by election on the basis of the number of units held by each unitholder, or as stipulated in the second paragraph of Article L. 214-39.

Where the members of the Supervisory Board are all unitholders' representatives elected on the basis of the number of units held and are themselves employees of the company and unitholders, the board exercises the voting rights attached to the securities issued by the company or by any of its associated companies; it informs the unitholders of the votes cast and explains its decisions.

Where the composition and appointment of the Supervisory Board are governed by the second paragraph of Article L. 214-39, the fund's rules provide for the board to exercise the voting rights attached to the securities issued by the company or by any company associated with it, and it informs the unitholders of the votes cast and explains its decisions. The regulations may nevertheless provide for the voting rights relating to those securities to be exercised individually by the unitholders, and for those of fractional units to be exercised by the Supervisory Board. In this case, the board makes the company's economic and financial information for the last three accounting periods available to the unitholders.

In companies that have a works council, the information provided to it pursuant to Articles L. 2323-7 to No. 2323-11 and L. 2323-46, L. 2323-51 and L. 2323-55 and L. 2325-35 to L. 2325-42 of the Labour Code must also be provided to the Supervisory Board, as well as, if applicable, a copy of the report from the accountant appointed pursuant to Articles L. 2325-35 to No. 2325-42 of that same code.

In companies that do not have a works council, the Supervisory Board may avail itself of the services of an accountant as provided for in Articles L. 2325-35 to L. 2325-42 of the Labour Code or call in the company's auditors to provide explanations concerning the company's accounts; it may also invite the chief executive to explain the events which had a significant influence on the valuation of the securities.

The Supervisory Board decides on the allocation of securities for purchase or exchange offers. The fund's rules specify the cases in which the board must obtain a prior opinion from the unitholders.

The Supervisory Board is required to examine the fund's financial, administrative and accounting management and may consult the management company, the depositary and the fund's auditor, who are required to cooperate with it. It decides mergers, demergers and liquidations. The fund's rules specify all changes to the rules themselves which cannot be decided without the Supervisory Board's consent. Without prejudice to the management company's remit as described in Article L. 214-25, or that of the liquidator as described in Article L. 214-31, the Supervisory Board may initiate legal proceedings to defend or assert the unitholders' rights or interests.

The Supervisory Board approves an annual report which is made available to each unitholder, the content of which is specified in the General Regulation of the Autorité des Marchés Financiers. It ensures regular transmission of information from the company to the unitholders.

The unitholders may opt for a cash redemption of the fund's units.

The rules also stipulate that the dividends and coupons attached to the securities included in the fund's assets shall be distributed to the unitholders, upon their express request, according to the terms therein. They shall provide, where necessary, for various categories of units.

In a company whose shares are admitted to trading on a regulated market, a fund primarily consisting of shares of that company held by employees or former employees must be managed by an independent intermediary.

The Supervisory Board of such a fund, or a group of employees or former employees holding rights over at least 1% of its assets, may bring court action to challenge the management company on the grounds of lack of independence in relation to the company whose shares are admitted to trading on a regulated market or to that company's management. A challenge upheld by the court gives entitlement to damages in favour of the co-owners.

Subject to a limit of 20% of the voting rights, portions of such rights associated with fractional shares may be exercised by the management company.

Where the company is governed by the aforementioned Act No. 47-1775 of 10 September 1947, the employee investment fund may invest in the equity securities that it issues, without prejudice to any specific provisions governing the subscription of such securities by the employees, and as established by decree.

Where securities issued by the company or by any company associated with it as provided for within the meaning of the second paragraph of Articles L. 3344-1 and L. 3344-2 of the Labour Code are not admitted to trading on a market referred to in Articles L. 421-4, L. 422-1 or L. 423-1 of this Code, the employee investment fund may be included in a Shareholders Agreement in order to foster the transfer of the firm, the stability of the shareholding structure or the fund's liquidity.

*Amended by Act No. 2001-152 of 19 February 2001 Art. 23 II Official Journal of 20 February 2001*

*Amended by Act No. 2006-1770 of 30 December 2006 Art. 35 and 36 Official Journal of 31 December 2006*

*Amended by Order No. 2007-1490 of 18 October 2010 Art. 1 Official Journal of 19 October 2010*

Article L. 214-40-1. The purpose of an open-ended investment company may be the management of a portfolio of financial securities issued by the company or by any company associated with it as provided for in Article L. 3332-15 of the



Labour Code. The fifth and sixth paragraphs of Article L. 214-40 apply to its Board of Directors. The constitutional documents stipulate that the dividends and coupons attached to the securities included in the firm's assets shall be distributed to the shareholders, upon their express request, according to the terms therein. They shall provide, where necessary, for various categories of shares.

*Inserted by Act No. 2001-152 of 19 February 2001 Art. 10 I Official Journal of 20 February 2001*

*Amended by Act No. 2006-1770 of 30 December 2006 Art. 35 Official Journal of 31 December 2006*

*Amended by Order No. 2007-329 of 12 March 2007 Art. 12 Official Journal of 13 March 2007*

*Amended by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

## Subsection 12 Innovation funds (Fonds communs de placement dans l'innovation)

*(Subsection number amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 24 Official Journal of 7 May 2005)*

Article L. 214-41. I. - Innovation funds (*fonds communs de placement dans l'innovation*, FCPI) are venture capital funds having at least 60% of their assets invested in financial securities, shares of limited liability companies and current account advances, at least 6% of which shall be invested in companies whose share capital is between €100,000 and €2 million, as specified in paragraphs 1 and 2 a) of Article L. 214-36, issued by companies having their registered office in a European Community Member State, or another State party to the European Economic Area Agreement which has entered into a tax treaty with France which contains an administrative assistance clause to combat tax fraud and avoidance, which are subject to corporation tax under ordinary law or would be liable therefor if they conducted their business in France, which have fewer than two thousand employees, whose capital is not primarily held, directly or indirectly, by one or more legal entities having dependency links with another legal entity within the meaning of paragraph III and which meet one of the following conditions:

a) They incurred cumulative research costs over the previous accounting period, as specified in paragraph II a) to g) of Article 244 quater B of the Code Général des Impôts, of an amount at least equal to 15% of the tax-deductible expenditures made during that accounting period, or, for manufacturing companies, at least 10% of these same expenditures. For the purposes of this paragraph, manufacturing companies are those companies carrying out an activity that contributes directly to the manufacture of products or the transformation of raw materials or semi-finished products into manufactured products, and in which technical installations, materials and tools play a preponderant role.

b) Or they can prove that they created products, processes or techniques, the innovative nature and economic development potential of which are recognised, as is the corresponding borrowing requirement. This assessment is made over a period of three years by an organisation designated by decree which is responsible for supporting innovation.

The provisions of paragraphs 4 and 5 of Article L. 214-36 apply equally to innovation funds, subject to compliance with paragraph I bis of this article and their specific investment quota of 60%.

I bis. The securities referred to in paragraph 3 of Article L. 214-36 are also eligible for the investment quota of 60% referred to in paragraph I, up to a maximum, for securities admitted to trading on a regulated market, of 20% of the fund's assets,

provided that the issuing company meets the conditions referred to in paragraph I, with the exception of the non-listing condition.

I quinquies. - 1. Subject to compliance with the limit of 20% specified in paragraph I bis, the equity securities referred to in paragraphs 1 and 3 of Article L. 214-36 issued by companies which meet the following conditions are also eligible for the investment quota referred to in paragraph I:

a) The company meets the conditions stipulated in paragraph I. The condition stipulated in paragraph I b) is assessed by the organisation which is also referred to in paragraph I b) in regard to the company, its activities and those of its subsidiaries referred to in point c), as prescribed by decree;

b) The company's corporate purpose is the holding of equity interests which meet the conditions stipulated in point c) and may be engaged in industrial or commercial activities within the meaning of Article 34 of the Code Général des Impôts;

c) The company exclusively holds equity interests representing at least 75% of the capital of companies:

1° Whose securities are of the type referred to in paragraphs 1 and 3 of Article L. 214-36;

2° Which meet the conditions referred to in the first subparagraph of paragraph I, with the exception of the conditions relating to staff numbers and capital;

3° Having as their corporate purpose the designing or creation of products, processes or techniques which meet the conditions of paragraph I b) or being engaged in industrial or commercial activities within the meaning of Article 34 of the Code Général des Impôts;

d) The company has at least one equity interest in a company as indicated in point c) whose corporate purpose is the designing or creation of products, processes or techniques which meet the conditions of paragraph I b).

2. A decree issued following consultation with the Conseil d'Etat specifies the method for calculating the condition relating to staff numbers imposed in the first subparagraph of paragraph I for the company referred to in paragraph 1 and for assessment of the condition of exclusivity in regard to the holding of equity interests specified in paragraph 1 c).

II. - The conditions relating to staff numbers and recognition by an organisation tasked with supporting innovation, or on account of their cumulative research costs, of the innovative nature of the companies whose securities are included in the assets of an innovation fund are assessed when the fund first subscribes to or purchases such securities.

In the event of a parent company referred to in the first subparagraph of paragraph I quinquies assigning the securities of subsidiaries referred to in paragraph I quinquies d) and thereby jeopardising the holding threshold of 75%, the securities of that parent company would no longer be included in the investment quota of 60%.

III. - When determining whether dependency links exist between two companies for the purposes of paragraph I, such links are deemed to exist:

- when one company directly, or through an intermediary, holds a majority of the equity capital of the other company or effectively exercises decision-making powers within it;

- or when they are both placed under the control of the same third company as indicated in the previous paragraph.

*Amended by Budget Act No. 2001-1275 of 20 December 2001 Art. 78 i c Official Journal of 29 December 2001.*

*Amended by Act No. 2003-721 of 1 August 2003 Art. 28 Official Journal of 5 August 2003*

*Amended by Order No. 2005-722 of 29 June 2005 Art. 9 Official Journal of 30 June 2005*

*Amended by Order No. 2005-1720 Art. 32 Official Journal of 31 December 2005*

*Amended by Act No. 2006-450 of 18 April 2010 Art. 29 Official Journal of 19 April 2010*

*Amended by Act No. 2006-1666 of 21 December 2006 Art. 65 Official Journal of 27 December 2006*

*Amended by Act No. 2008-776 4 August 2008 Art. 26 Official Journal of 5 August 2008*

*Amended by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

### Subsection 13 Local investment funds (Fonds d'investissement de proximité)

*(Subsection number amended by the Economic Modernisation Act No. 2003-721 and subsection number amended by Order No. 2005-429 modifying the Monetary and Financial Code Art. 24 Official Journal of 7 May 2005)*

Article L. 214-41-1. 1. Local investment funds (*fonds d'investissement de proximité*, FIP) are venture capital funds having at least 60% of their assets invested in financial securities, shares of limited liability companies and current account advances, at least 10% of which is in new companies conducting their business or legally constituted for less than five years, as specified in paragraphs 1 and 2 a) of Article L. 214-36, issued by companies having their registered office in a European Community Member State, or another State party to the European Economic Area Agreement which has entered into a tax treaty with France which contains an administrative assistance clause to combat tax fraud and avoidance, which are subject to corporation tax under ordinary law or would be similarly liable therefor if they conducted their business in France and which meet the following conditions:

a) They conduct their business mainly through establishments located in the geographic area chosen by the fund and in no more than four adjoining regions, or, if this condition is inapplicable, they have established their registered office there. The fund may also choose a geographic area consisting of one or more overseas *départements* as well as Saint-Barthelemy and Saint Martin.

b) They come within the definition of small and medium-sized enterprises provided in Appendix I of Commission Regulation EC 70/2001, of 12 January 2001, relating to the application of Articles 87 and 88 of the EC Treaty to State aid in favour of small and medium-sized enterprises;

c) They do not have the holding of equity interests as their corporate purpose, unless they only hold securities giving access to the capital of companies whose purpose is not the holding of equity interests and which meet the conditions of eligibility set forth in points a) and b) above.

The conditions specified in points a) and b) are verified on the date on which the fund makes its investments.

The units of the venture capital funds referred to in Article L. 214-36 and the shares of the venture capital companies governed by Article 1-1 of Act No. 85-695 of 11 July 1985, which introduces various economic and financial provisions, are also taken into account for calculation of the investment quota of 60%, in proportion to the percentage of direct investment of the structure in question's assets in companies which meet the conditions set forth in the first paragraph, points a) and b), with the exception of companies whose corporate purpose is the holding of equity interests.

However, a local investment fund cannot invest more than 10% of its assets in the units of venture capital funds and the shares of venture capital companies.

Contributions made to mutual guarantee societies or other guarantee societies conducting business in the geographic area

chosen by the fund are also taken into account for calculation of the quota of 60%.

1 bis. The securities referred to in paragraph 3 of Article L. 214-36 are also eligible for the investment quota of 60% referred to 1, up to a maximum of 20% of the fund's assets, provided that the issuing company meets the conditions referred to in paragraph 1, with the exception of the non-listing condition, and does not have the holding of equity interests as its corporate purpose.

2. The provisions of paragraphs 4 and 5 of Article L. 214-36 apply to local investment funds, subject to them meeting the quota of 60% and the conditions of eligibility as defined in paragraphs 1 and 1 bis of this article. Notwithstanding the provisions of 5 of that same article, however, local investment funds created by 31 December 2004 must have met their investment quota of 60% when the closing valuation for the second accounting period following that of their creation takes place, at the latest.

3. Holdings of the units of a local investment fund are subject to the following limits:

- a) 20% by a single investor
- b) 10% by a single investor which is a public corporation
- c) 30% by public corporations collectively.

4. Local investment funds cannot benefit from the provisions of Articles L. 214-33 and L. 214-37.

5. A decree issued following consultation with the Conseil d'Etat shall determine the implementing regulations for the quota referred to in paragraph 1 in the event of the fund making further calls for capital or seeking further subscriptions. It shall determine the rules for evaluating the quota, the criteria applied to determine whether a company conducts its business mainly in the geographic area chosen by the fund, and the specific rules relating to assignment and the limits for the holding of assets.

*Inserted by Act No. 2003-721 of 1 August 2003 Art. 26 1 Official Journal of 5 August 2003*

*Paragraph 1 of Article 38 of 2005 Budget Act No. 2004-1484 of 30 December 2004 Art. 38 Official Journal of 31 December 2004 amends Article L. 214-36.. V of Article 38 stipulates that shall come into force with the elimination of the Nouveau Marché: the status of regulated market in financial instruments of the Nouveau Marché is withdrawn as of 21 February 2005 by Decree of 24 February 2005 relating to withdrawal of the status of regulated market in financial instruments of the Nouveau Marché Official Journal of 27 February 2005, p. 3608.*

*Amended by Act No. 2005-882 of 2 August 2005 Art. 98 Official Journal of 3 August 2005*

*Amended amended by Order No. 2008-698 of 11 July 2008 Art. 1 Official Journal of 16 July 2008*

*Amended by Act No. 2008-7760 4 August 2008 Art. 35 Official Journal of 5 August 2008*

*Amended by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

*Amended by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

### Subsection 14 Futures funds (Fonds communs d'intervention sur les marchés à terme)

*(Subsection number amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 24 Official Journal of 7 May 2005)*

Article L. 214-42. - The rules of a common fund created to operate on the futures markets stipulate the amount of the cash or cash equivalents that that fund must hold. This amount shall not be below a minimum level established by decree.

The futures markets list is determined by order of the Minister for the Economy.

The first and third paragraphs of Article L. 214-35-1 shall apply to futures funds (*fonds communs d'intervention sur les marchés à terme*). The General Regulation of the Autorité des Marchés Financiers shall determine the conditions under which the units or shares in such funds may be made available to other investors in keeping, *inter alia*, with the nature thereof and the level of risk that the fund presents. Such funds cannot be directly marketed.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 63 III Official Journal of 2 August 2003*

## Section 2 Securitisation schemes (Organismes de titrisation)

*Amended by Order No. 2008-556 of 13 June 2008 Art. 16 Official Journal of 14 June 2008*

### Subsection 1 Provisions applicable to all securitisation schemes

*Inserted by Order No. 2008-556 of 13 June 2008 Art. 16 Official Journal of 14 June 2008*

#### Paragraph 1 General provisions

*Inserted by Order No. 2008-556 of 13 June 2008 Art. 16 Official Journal of 14 June 2008*

Article L. 214-42-1. - The purpose of securitisation schemes (*organismes de titrisation*) is:

- on one hand, to be exposed to risks, including insurance risks, via the acquisitions of receivables or the conclusion of contracts to create financial futures or to transfer insurance risk

- on the other hand, to completely finance or cover these risks by issuing shares, units or debt securities, by concluding contracts to create financial futures or transfer insurance risks, or by borrowing or other forms of resources.

They take the form of either securitisation investment funds or securitisation companies.

*Inserted by Order No. 2008-556 of 13 June 2008 Art. 16 Official Journal of 14 June 2008*

Article L. 214-43. - The securitisation scheme may have two or more subfunds if its constitutional documents or regulations so provide. Each subfund gives rise to the issuance of units or shares and, if applicable, debt securities. As an exception to Article 2285 of the Civil Code, and unless otherwise stipulated in the scheme's constituting documents, the assets of a given subfund may only be used to meet that subfund's debts, commitments and obligations and only benefit from that subfund's rights and assets.

The conditions under which the scheme or, if applicable, the scheme's subfunds may borrow and enter into contracts to create financial futures are established by a decree issued following consultation with the Conseil d'Etat. This decree also determines the rules with which the scheme's asset structure must comply.

**To fulfil its corporate purpose, a securitisation scheme may subsidiarily hold equity securities received by converting, exchanging or redeeming debt securities or securities giving access to capital.**

The units or shares and debt securities issued by the scheme may give rise to different rights over principal and interest. The scheme's regulations or constitutional documents, as well as any contract concluded on behalf of the scheme, may stipulate that the rights of certain of the scheme's creditors shall be subordinate

to the rights of other creditors. The rules for allocating the sums received by the scheme shall apply to unitholders, shareholders, holders of debt securities as well as creditors who have accepted these sums. They are applicable even in the case of the scheme's liquidation.

The securitisation scheme's assets may only be subject to civil enforcement actions if they comply with the allocation rules defined by the scheme's regulations or constitutional documents.

The units or shares shall not entitle their holders to request redemption by the scheme.

Under the conditions defined in its regulations or constitutional documents, and without prejudice to the provisions of Article L. 214-49-1 and paragraph I of Article L. 214-49-7, the scheme or its subfunds, if any, may assign the receivables and the assets that they hold and resolve or liquidate any contracts to create financial futures.

To fulfil its corporate purpose, a securitisation scheme made, under conditions defined by decree issued following consultation with the Conseil d'Etat, grant the guarantees referred to in Article L. 211-38, and, under the conditions defined in its regulations or constitutional documents, receive any type of guarantee or collateral.

The acquisition or assignment of receivables is effected simply upon delivery of a transfer deed, the terms and mode of which are established by decree, or by any other method of transfer under French or foreign law. It shall take effect between the parties and becomes enforceable against third parties on the date affixed on the transfer deed when it is handed over, regardless of the receivables' origination date, maturity date or due date, without any other formality being necessary, and regardless of the law applicable to the receivables and the law of the debtors' country of domicile. Notwithstanding the institution of any proceedings referred to in Book VI of the Commercial Code, or equivalent proceedings based on foreign law against the assignor after the assignment, the assignment shall remain effective after the initial judgement. Service of the transfer deed shall automatically entail transfer of the collaterals, guarantees and accessories attached to each receivable, including the mortgage collaterals, and its enforceability against third parties without any other formality being necessary.

As an exception to the previous paragraph, the assignment of receivables that take the form of financial instruments shall be carried out in compliance with the regulations applicable to the transfer of these instruments. If needed, the scheme made directly subscribe to the issue of these instruments.

The enforcement or establishment of such guarantees or security interests shall entitle the fund to acquire possession of or title to the assets which are the subject thereof.

Where the receivable assigned to the scheme is the result of a tenancy agreement or a leasing contract, the institution of proceedings referred to in Book VI of the Commercial Code, or equivalent proceedings based on foreign law against the lessor or leasing company shall not affect the performance of the contract.

The transfer agreement may provide for a claim in favour of the assignor on all or part of any liquidation surplus of the scheme or, if applicable, a subfund of the scheme.

*Inserted by Order No. 2008-556 of 13 June 2008 Art. 16 Official Journal of 14 June 2008*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 69 Official Journal of 23 October 2010*

Article L. 214-44. - Where the units, shares or debt securities issued by the securitisation scheme are admitted to trading on a regulated market, or the subject of an offer to the public, a document containing an assessment of the characteristics of the units and, if applicable, the debt securities to be issued by the

scheme, the receivables it proposes to acquire and the contracts that constitute forward financial instruments or transfer insurance risks it intends to enter into and an evaluation of the risks they represent shall be drawn up by an entity that appears on a list established by the Minister for the Economy after consultation with the Autorité des Marchés Financiers. This document shall be appended to the document referred to in Article L. 412-1 and sent to the subscribers of units and, if applicable, debt securities.

The units, shares and debt securities that the scheme issues may not be directly marketed, except with respect to the qualified investors referred to in paragraph II of Article L. 411-2.

*Inserted by Order No. 2008-556 of 13 June 2008 Art. 16 Official Journal of 14 June 2008*

*Amended by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 214-45. - Securitisation schemes must provide the Banque de France with the information it needs to compile monetary statistics.

*Inserted by Order No. 2008-556 of 13 June 2008 Art. 16 Official Journal of 14 June 2008*

Article L. 214-46. - Recovery of the receivables assigned to the scheme shall continue to be carried out by the assignor or by the entity responsible for them prior to their assignment, under conditions set forth in an agreement entered into with the scheme's management company.

Some or all of the recovery may nevertheless be entrusted to another entity, provided that the debtor is informed thereof by ordinary letter.

This article does not apply to receivables in the form of financial instruments.

*Inserted by Order No. 2008-556 of 13 June 2008 Art. 16 Official Journal of 14 June 2008*

Article L. 214-46-1. - The management company and any entity responsible for receiving sums due or benefiting, either directly or indirectly, the scheme may agree that the sums recovered either directly or indirectly on behalf of the scheme be credited to an account specifically dedicated to the scheme or, if applicable, to the subfund, against which creditors of the entity responsible for receiving may not pursue payment of their claims, even in the case of proceedings instituted against it on the basis of Book VI of the Commercial Code, or equivalent proceedings on the basis of foreign law. The terms and conditions applicable to that account are established by decree.

No termination of the agreement governing the account referred to in the previous paragraph, or any closure of this account, may result from the institution of proceedings on the basis of Book VI of the Commercial Code, or equivalent proceedings on the basis of foreign law against the assignor or, if any, the entity responsible for recovering or receiving sums due or benefiting, either directly or indirectly, the scheme.

*Inserted by Order No. 2008-556 of 13 June 2008 Art. 16 Official Journal of 14 June 2008*

Article L. 214-47. - The nature and characteristics of receivables that securitisation schemes may acquire shall be established by decree.

*Inserted by Order No. 2008-556 of 13 June 2008 Art. 16 Official Journal of 14 June 2008*

Article L. 214-48. - I. - The scheme's regulations or constitutional documents shall determine the accounting periods, which shall not exceed twelve months. The first accounting

period may nevertheless be of longer duration, but shall not exceed eighteen months.

II. - Separate accounts shall be maintained in the scheme's books for each subfund.

Within six weeks of the end of each half-year of an accounting period, the management company shall draw up an inventory of the assets for each scheme that it manages, under the depositary's supervision.

III. - The provisions of Book VI of the Commercial Code shall not apply to securitisation schemes.

The securitisation scheme, or a subfund of the scheme, if any, is only liable for debts, including those owed to holders of debt securities, that are within the limits of the scheme's assets and according to the ranking of its creditors as defined by law, or as a result, in application of the third paragraph of Article L. 214-43, of the constitutional documents or regulations of the scheme or contracts concluded by it.

*Inserted by Order No. 2008-556 of 13 June 2008 Art. 16 Official Journal of 14 June 2008*

## Paragraph 2 Specific provisions for securitisation companies

*Inserted by Order No. 2008-556 of 13 June 2008 Art. 16 Official Journal of 14 June 2008*

Article L. 214-49. - A securitisation company is a securitisation scheme that takes the form of a public limited company or a simplified joint-stock company.

The company must make mention of its status as a securitisation company on all documents intended for third parties.

*Inserted by Order No. 2008-556 of 13 June 2008 Art. 16 Official Journal of 14 June 2008*

Article L. 214-49-1. - A securitisation company's management is carried out by a portfolio management company governed by Article L. 539-2 or buy a debt securitisation fund management firm governed by paragraph I of Article L. 214-48 in their wording in force on the date of publication of Order No. 2008-556 of 13 June 2008 transposing Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending the legal framework of debt securitisation funds (*fonds communs de créance*). This company shall be designated in the securitisation company's constitutional documents.

Where a securitisation company's constitutional documents stipulate the use of futures to expose the company or the assignment of receivables that have become due or which have been accelerated, the management company referred to in the first paragraph shall submit a specific activity programme to the Autorité des Marchés Financiers for approval, under the conditions set forth in the Autorité's General Regulation. Nevertheless, in cases defined by decree issued following consultation with the Conseil d'Etat, this approval is not required for certain assignments of receivables that have become due or which have been accelerated.

However, the company mentioned in the first paragraph may assign the transactions referred to in the second paragraph to a portfolio management company, who carries them out under its responsibility. The provisions of the second paragraph shall henceforth be applicable to that portfolio management company.

*Inserted by Order No. 2008-556 of 13 June 2008 Art. 16 Official Journal of 14 June 2008*

Article L. 214-49-2. - The securitisation company's cash and receivables shall be held by a single depositary separate from the



company. The depositary shall be a credit institution established in a State that is party to the European Economic Area agreement or a credit institution established a State that appears on a list established by order of the Minister for the Economy, or by any other institution approved by the Minister for the Economy. It shall be designated in the securitisation company's constitutional documents. It shall verify that the management company's decisions with respect to this securitisation company comply with the terms and conditions set forth in the General Regulation of the Autorité des Marchés Financiers. However, custody of the receivables may be provided, under their responsibility, by the assignor or by the entity responsible for recovering the receivables as established by decree.

*Inserted by Order No. 2008-556 of 13 June 2008 Art. 16 Official Journal of 14 June 2008*

Article L. 214-49-3. - I. - As an exception to Parts II and III of Book II of the Commercial Code, where the securitisation company is in the form of a public limited company:

1° An ordinary General Meeting may be held without any quorum being required; the same applies to a reconvened extraordinary General Meeting

2° An individual may simultaneously hold five appointments as general manager, Executive Board member or sole general manager of a securitisation company. Remits as general manager, Executive Board member or sole general manager of a securitisation company shall not be taken into account for the calculation of plurality of offices referred to in Book II of the Commercial Code.

3° Appointments as a legal entity's permanent representative on a securitisation company's Board of Directors or Supervisory Board are not taken into account for the purposes of Articles L. 225-21, L. 225-77 and L. 225-94-1 of the Commercial Code

4° The securitisation company's auditor shall be appointed by the Board of Directors or the Executive Board. The appointment of an alternate auditor is not required.

The auditor informs the securitisation company's executives and the Autorité des Marchés Financiers of any irregularities or inaccuracies uncovered in performance of the auditing mission.

5° An extraordinary General Meeting which decides on a conversion, merger or demerger empowers the Board of Directors or the Executive Board to value the assets and determine the share-for-share exchange parity on a date which it sets; this procedure takes place under the supervision of the auditor without there being any requirement to appoint an auditor for the merger; the General Meeting is exempted from approving the accounts if they are certified by the auditor;

6° The minimum share capital shall be equal to that established by Article L. 224-2 of the Commercial Code.

II. - The provisions of Order No. 45-2710 of 2 November 1945 concerning investment companies, those of Book VI as well as Articles L. 224-1, L. 225-4 to L. 225-7, the third and fourth paragraphs of Article L. 225-8 and Articles L. 225-9, L. 225-10, L. 225-13, L. 225-25, L. 225-26, L. 225-258 to L. 225-270, L. 228-39, L. 242-31 and L. 247-10 of the Commercial Code shall not be applicable to securitisation companies.

*Inserted by Order No. 2008-556 of 13 June 2008 Art. 16 Official Journal of 14 June 2008*

*Amended by Order No. 2009-80 of 22 January 2009 Art. 2 Official Journal of 23 January 2009*

### Paragraph 3 Specific provisions for securitisation common funds (Fonds communs de titrisation)

*Inserted by Order No. 2008-556 of 13 June 2008 Art. 16 Official Journal of 14 June 2008*

Article L. 214-49-4. - A securitisation common fund (*fonds commun de titrisation*) is a securitisation scheme in the form of a co-ownership.

The fund does not have legal personality. The provisions of the Civil Code which relate to jointly held property do not apply to securitisation common funds, and nor do those of Articles 1871 to 1873 of that same code which relate to holding companies.

The minimum amount for a unit issued by a securitisation common fund is established by decree.

For all transactions undertaken on behalf of the co-owners, the name of the fund or, if applicable, of a subfund of the fund, may be validly substituted for that of the co-owners.

*Inserted by Order No. 2008-556 of 13 June 2008 Art. 16 Official Journal of 14 June 2008*

Article L. 214-49-5. - The conditions under which the fund may issue new units after initial issuance of units shall be defined in its regulations.

The fund may issue negotiable debt securities and bonds or debt securities issued under foreign law.

The conditions under which the fund shall issue debt securities shall be defined in its regulations.

*Inserted by Order No. 2008-556 of 13 June 2008 Art. 16 Official Journal of 14 June 2008*

Article L. 214-49-6. - A securitisation common fund is set up on the joint initiative of a company responsible for managing the fund and a legal entity that acts as depositary of the fund's cash and receivables.

Where the units or debt securities issued by the fund are admitted to trading on a regulated market or offered to the public, the management company and the legal entity acting as depositary of the cash and receivables shall draw up the document referred to in Article L. 412-1.

*Inserted by Order No. 2008-556 of 13 June 2008 Art. 16 Official Journal of 14 June 2008*

Article L. 214-49-7. - The management company referred to in Article L. 214-49-6 shall be a portfolio management company governed by Article L. 539-2 or a debt securitisation fund's management firm governed by paragraph I of Article L. 214-48 in their wording in force on the date of publication of Order No. 2008-556 of 13 June 2008 transposing Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending the legal framework of debt securitisation funds. This company shall be designated in the fund's regulations. It represents the fund in relation to third parties and in any legal proceedings, whether as plaintiff or defendant.

Where a securitisation fund's constitutional documents stipulate the use of futures to expose the fund or the assignment of receivables that have become due or which have been accelerated, the management company referred to in the first paragraph shall submit a specific activity programme to the Autorité des Marchés Financiers for approval, under the conditions set forth in the Autorité's General Regulation. Nevertheless, in cases defined by decree issued following consultation with the Conseil d'Etat, this approval is not required for certain assignments of receivables that have become due or which have been accelerated.

However, the management company mentioned in the first paragraph may assign the transactions referred to in the second paragraph to a portfolio management company, who carries them out under its responsibility. The provisions of the second paragraph shall henceforth be applicable to that portfolio management company.

II - The legal entity acting as depositary of the cash and receivables of the fund referred to in Article L. 214-49-6 is a credit institution established in a State party to the European Economic Area Agreement, a credit institution established in a State that appears on a list drawn up by the Minister for the Economy or any other institution approved by the Minister for the Economy. It acts as depositary of the cash and receivables acquired by the fund and verifies that the management company's decisions with respect to the fund comply with the terms and conditions set forth in the General Regulation of the Autorité des Marchés Financiers. However, custody of the receivables may be provided, under their responsibility, by the assignor or by the entity responsible for recovering the receivables as established by decree.

Article L. 214-49-8. - The unitholders are liable for the fund's and, if applicable, the subfund's debts only within the limits of the issue value of these units.

Article L. 214-49-9. - The fund's auditor shall be appointed by the management company's Board of Directors, manager or Executive Board.

The auditor shall inform the management company's executives and the Autorité des Marchés Financiers of any irregularities or inaccuracies uncovered in performance of the auditing mission.

The fund's unitholders exercise the rights vested in shareholders by Articles L. 225-6 et L. 823-231 of the Commercial Code.

*Inserted by Order No. 2008-556 of 13 June 2008 Art. 16 Official Journal of 14 June 2008*

Article L. 214-49-10. - Liquidation of the fund or of one of its subfunds by the management company shall be carried out under the conditions stipulated in the fund's regulations.

*Inserted by Order No. 2008-556 of 13 June 2008 Art. 16 Official Journal of 14 June 2008*

## Subsection 2 Special provisions for insurance securitisation schemes or insurance securitisation schemes' subfunds

*Inserted by Order No. 2008-556 of 13 June 2008 Art. 16 Official Journal of 14 June 2008*

Article L. 214-49-11. - This subsection applies to insurance securitisation schemes or insurance securitisation schemes' subfunds who sign one or more insurance risk transfer contracts with an insurance or reinsurance scheme, a securitisation scheme governed by this subsection or a foreign securitisation vehicle referred to in Article 310-1-2 of the Insurance Code.

*Inserted by Order No. 2008-556 of 13 June 2008 Art. 16 Official Journal of 14 June 2008*

Article L. 214-49-12. - A decree shall establish the conditions under which an scheme or, if any, a subfund governed by this subsection shall sign insurance risk transfer contracts referred to

in Article L. 214-49-11 as well as the nature of the insurance risks covered by these contracts.

The schemes or subfunds governed by this subsection may, under terms and conditions established by decree, transfer or settle the insurance risk transfer contracts referred to in Article L. 214-49-11.

Redemption of the units, shares or debt securities issued by a scheme governed by this subsection, as well as its obligations with respect to other financing mechanisms to which it has recourse, shall be subordinate to its commitments with respect to the insurance risk transfer contracts referred to in Article L. 214-49-11.

*Inserted by Order No. 2008-556 of 13 June 2008 Art. 16 Official Journal of 14 June 2008*

Article L. 214-49-13. - The creation of a securitisation scheme or a subfund of the securitisation scheme governed by this subsection, or the transformation of an existing scheme or subfund into a securitisation scheme governed by this subsection, shall be subject to approval by the Autorité de Contrôle Prudentiel.

In deciding whether to grant authorisation, the Autorité de Contrôle Prudentiel shall verify that:

1° The scheme's constitutional documents or regulations comply with the provisions of this section

2° The persons entrusted with the management of the scheme are of good repute and possess the appropriate professional qualifications

3° The scheme has sound administrative and accounting procedures, and appropriate internal control and risk management mechanisms.

The Supervisory Authority may, on justified grounds, revoke its authorisation at the request of the scheme or if the scheme no longer meets the conditions of its authorisation.

This article's implementing measures are, as needed, determined in a decree issued following consultation with the Conseil d'Etat.

*Inserted by Order No. 2008-556 of 13 June 2008 Art. 16 Official Journal of 14 June 2008*

*Amended by Order No.2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Article L. 214-49-13-1. - For the purpose of carrying out its official duties, and within the limits of those duties, particularly those mandated by Article L. 214-49-13, the Autorité de Contrôle Prudentiel may carry out investigations, on the basis of documents and on the spot, with respect to a management company or a securitisation scheme governed by Section 2 of Chapter IV of Part I of Book II.

It may request that the securitisation scheme's management company and, if need be, the portfolio management company responsible for the scheme's financial management, provide it with any and all information and documents referred to in the first and second paragraphs of Article L. 612-24.

It may also call upon the auditors of the above-mentioned companies in the conditions set forth in Article L. 612-44.

*Inserted by Order No.2010-76 of 21 January 2010 Art. 2 Official Journal of 22 January 2010*

*Amended by Order No.2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

**Subsection 3 Debt securitisation funds set up prior to the date of publication of Order No. 2008-556 of 13 June 2008 transposing Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending the legal framework of debt securitisation funds**

*Inserted by Order No. 2008-556 of 13 June 2008 Art. 16 Official Journal of 14 June 2008*

Article L. 214-49-14. – Debt securitisation funds set up before the date of publication of Order No. 2008-556 of 13 June 2008 transposing Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending the legal framework of debt securitisation funds shall remain subject to Articles L. 214-43 to L. 214-49 in their wording before this date, without amendment of the regulations in order to bring them into compliance with the provisions of this section as securitisation common funds.

*Inserted by Order No. 2008-556 of 13 June 2008 Art. 16 Official Journal of 14 June 2008*

## Section 3 Real-estate investment companies

### Subsection 1 General scheme

Article L. 214-50. - The sole purpose of a real-estate investment company (*société civile de placement immobilier*, SCPI) is the acquisition and management of real estate for letting. For the purposes of such management they may carry out improvements and, to a lesser extent, extensions and reconstruction work; they may purchase the equipment and installations necessary to render the properties usable. They may, moreover, transfer real-estate assets elements provided that they have not bought them with a view to selling them and that such transfers do not take place frequently.

Article L. 214-51. Real-estate investment companies may make public offerings of their units, provided that the units held by the founding members represent a total value at least equal to the minimum share capital as determined in Article L. 214-53 and that they can show that they have a bank guarantee authorised by the Autorité des Marchés Financiers which is intended to meet the redemption referred to in Article L. 214-54.

The units thus held by the founders are inalienable for three years from issuance of the Autorité's certificate.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 V 1° Official Journal of 2 August 2003*

*Amended by Order No. 2009-80 of 22 January 2009 Art. 2 Official Journal of 23 January 2009*

Article L. 214-52. - The constitutional documents of a real-estate investment company formed to make public offerings shall be drawn up and signed by one or more founders.

The initial capital must be fully subscribed.

*Amended by Order No. 2009-80 of 22 January 2009 Art. 2 Official Journal of 23 January 2009*

Article L. 214-53. - The minimum share capital cannot be less than 750,000 euros. The units are in registered form and have a minimum par value of one hundred and fifty euros.

*Amended by Order No. 2009-916 of 19 September 2000 Art. 5 IV Official Journal of 22 September 2000*

Article L. 214-54. - At least 15% of the maximum capital of a real-estate investment company, as determined by its constitutional documents, must be subscribed by the public within one year of the opening date for subscriptions.

If this obligation is not met, the company shall be dissolved and the partners shall be repaid the amount they subscribed.

Article L. 214-55. - The partners shall not incur liability unless a prior and unsuccessful action has been brought against the company. Each partner shall incur liability towards third parties in proportion to the portion of the capital that he holds and subject to a limit of twice the amount of that portion. The company's constitutional documents may provide for each partner's liability to be limited to the amount of his portion of the company's capital.

The company is required to take out an insurance policy to cover its civil liability associated with the properties it owns.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 52 Official Journal of 2 August 2003*

Article L. 214-56. In the event of a partner in a company which makes public offerings being affected by personal bankruptcy, court-ordered reorganisation or liquidation, the offer to sell that partner's units referred to in Article L. 214-59 is entered in the company's register.

*Amended by Act No. 2005-845 of 26 July 2005 Art. 165 and 174 I Official Journal of 27 July 2005*

*Amended by Order No. 2009-80 of 22 January 2009 Art. 2 Official Journal of 23 January 2009*

Article L. 214-57. - In the event of contributions in kind being made or of specific advantages being stipulated in favour of certain persons, whether they be partners or otherwise, a valuer of contributions in kind shall be appointed by a court decision at the request of one or more of the founders, or the management company. The said valuer shall assess the value of the contributions in kind and specific advantages under his own responsibility. His report, appended to the draft constitutional documents, shall be kept available to the subscribers as established by decree.

The founding general meeting or, in the case of a capital increase, an extraordinary general meeting, decides on the valuation of the contributions in kind and the granting of specific advantages. It may reduce them only on a unanimous vote of all the subscribers. Failing the express approval of the contributors and the beneficiaries of specific advantages, duly recorded in the minutes, the company shall not be formed or the capital increase shall not be effected.

Any real-estate investment company formed without a public offering that intends to make such an offering subsequently must, before so doing, commission an audit of its assets and liabilities, and also, if applicable, the advantages granted pursuant to the preceding paragraphs.

No contribution of know-how may be represented by the capital shares.

*Amended by Order No. 2009-80 of 22 January 2009 Art. 2 Official Journal of 23 January 2009*

Article L. 214-58. - The provisions of the second paragraph of Article 1865 of the Civil Code relating to publication of capital share transfers are not applicable to real-estate investment companies.

## Subsection 2 Unit subscription

Article L. 214-59. - I. - Buy and sell orders shall be, under pain of being declared null and void, entered in a register kept at the company's registered office. The execution price reflects the bid-offer differential: it is determined and published by the management company at the end of each order registration period.

Each transaction gives rise to an entry in the partners' register which is deemed to constitute a deed of transfer as envisaged in Article 1865 of the Civil Code. The resultant transfer of ownership is binding on the company and third parties thereafter. The management company guarantees the satisfactory completion of such transactions.

The General Regulation of the Autorité des Marchés Financiers establishes the implementation procedures for this paragraph I, and in particular the information requirements for the units on the secondary market and determination of the registration period for orders.

II. - Where the management company notes that the register referred to in paragraph I has contained sell orders representing at least 10% of the units issued by the company for more than twelve months, it informs the Autorité des Marchés Financiers thereof without delay. The same procedure is applicable if the redemption requests which are not processed within twelve months represent at least 10% of the units.

Within two months of reporting thereon, the management company shall convene an extraordinary general meeting at which it shall propose a partial or total asset disposal and any other appropriate measure. Such disposals are deemed to be compliant with Article L. 214-50.

*Amended by Act No. 2001-602 of 9 July 2001 Art. 9 V 6° Official Journal of 11 July 2001*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 V 1° Official Journal of 2 August 2003*

Article L. 214-60. - The unit subscription price is determined on the basis of the replacement value defined in Article L. 214-78.

Any variance between the subscription price and the replacement value of the units in excess of 10% must be explained by the management company and reported to the Autorité des Marchés Financiers in the manner determined in an order of the Minister for the Economy.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 V 1° Official Journal of 2 August 2003*

*Article L. 214-61. – Repealed by Act 2001-602*

Article L. 214-62. - Having heard the auditors' report, the management company either proposes that the general meeting reduce the unit price, provided that it is not reduced by more than 30%, or that it effect a partial or total asset disposal. Such disposals are deemed to meet the conditions specified in Article L. 214-50.

The management company's report and the auditors' report, as well as the draft resolutions for the general meeting, are sent to the Autorité des Marchés Financiers one month before the date of the general meeting.

*Amended by Act No. 2001-602 of 9 July 2001 Art. 9 V 7° Official Journal of 11 July 2001*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 V 1° Official Journal of 2 August 2003*

Article L. 214-63. - All unit subscriptions shall be recorded in a register established under conditions established by decree.

At least one quarter of the par value of units subscribed in cash is paid upon subscription, as well as the whole of the issue premium, if applicable. The balance must be paid in one or more instalments within five years of subscription.

New units cannot be created with the intention of increasing the share capital until the initial capital has been fully paid up and any offers to sell units indicated in the register referred to in Article L. 214-59 at a price lower than or equal to that requested from new subscribers have been met.

A capital reduction which is not brought about by losses cannot be invoked against creditors whose debt antedates that reduction. In the event of non-payment, such creditors may demand repayment to the company of the sums reimbursed to the members.

Article L. 214-64. A capital increase may be proceeded with if at least three quarters of the value of the subscriptions received for the previous increase have been invested or allocated to investments in progress, pursuant to the corporate purpose as defined in Article L. 214-50.

Companies governed by the provisions of Article L. 231-1 of the Commercial Code may create new units if at least three quarters of the net receipts for the previous twelve months are invested or allocated to investments in progress, pursuant to the corporate purpose as defined in Article L. 214-50.

Article L. 214-65. - Save for inheritance, liquidation of joint estate of spouses, and assignment to a spouse, an ascendant or a descendant, the assignment of units to a third party, whatever the reason, may be subject to the company's approval through a clause in the constitutional documents.

If an approval clause exists, the approval request, indicating the assignee's surname, forenames and address, the number of units in respect of which assignment is envisaged and the price offered, is sent to the company. Approval is notified either by letter or through the absence of a reply within two months of the request being made.

If the company does not approve the proposed assignee, the management company is required, within one month of notification of refusal, either to sell the units to a member or to a third party, or, with the assignor's consent, to the company, in order to reduce the capital. If the parties fail to agree, the price of the units is determined as provided for in Article 1843-4 of the Civil Code. Any contrary provision in Article 1843-4 is deemed not to exist.

If the sale is not concluded upon expiry of the period indicated in the previous paragraph, approval is deemed to have been given. The said period may nevertheless be extended by a court decision at the company's request.

If the company has given its consent for a proposed pledging of units as envisaged above, that consent shall constitute approval in the event of a forced sale of the pledged units pursuant to the provisions of the first paragraph of Article 2078 of the Civil



Code, unless the company prefers to buy back the units immediately after the sale in order to reduce its capital.

### Subsection 3 Management

Article L. 214-66. - A real-estate investment company's management shall be carried out by a management company designated in its constitutional documents or by a majority of the votes cast by the members present or represented at a general meeting. The management company, regardless of how it was designated, may be dismissed by a general meeting voting on that same majority basis. Any contrary provision is deemed not to exist. If dismissal is decided without just cause, it may give rise to compensation.

The management company may, moreover, be dismissed by the courts for a legitimate reason at the request of any member.

Article L. 214-67. - The management company is created in the form of either a public limited company with minimum capital of at least two hundred and twenty-five thousand euros, or a general partnership. In the latter case, at least one of the members must be a public limited company with minimum share capital as aforementioned.

The management company must be approved by the Autorité des Marchés Financiers.

The Autorité des Marchés Financiers may withdraw a management company's approval on justified grounds.

Management companies responsible for managing real-estate investment companies may not create real-estate collective investment schemes prior to having brought their constitutional documents, organisation and their resources into line with Section 5 and having received approval by the Autorité des Marchés Financiers under conditions stipulated in the General Regulation of the Autorité des Marchés Financiers.

Where one of the real-estate investment companies managed by a management company is transformed into a real-estate collective investment scheme managed by that same company, as soon as it fulfils the conditions stipulated in Article L. 214-119, or where the company creates such a scheme, the other real-estate investment companies may continue to be managed by this company.

*Amended by Order No. 2009-916 of 19 September 2000 Art. 5 IV Official Journal of 22 September 2000*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 V 1, 2 or 3 Official Journal of 2 August 2003*

*Amended by Order No. 2005-1278 of 13 October 2005 Art. 3 Official Journal of 14 October 2005*

*Amended by Order No. 2008-1081 of 23 October 2008 Art. 3 Official Journal of 24 October 2008*

Article L. 214-68. - The management company must provide adequate guarantees in respect of its organisation, its technical and financial resources, and the good standing and experience of its managers. It must take the necessary steps to ensure the security of the transactions it carries out. It must act solely in the interests of the subscribers.

It represents the managed company in regard to third parties and may bring legal proceedings to defend or assert the unitholders' rights or interests.

Article L. 214-69. - The management company must have sufficient financial resources to enable it to effectively conduct its business and meet its responsibilities.

The management company of a real-estate investment company cannot receive funds on behalf of the real-estate investment company.

Article L. 214-70. - A Supervisory Board is entrusted with assisting the management company; it is composed of at least seven members of the real-estate investment company who are appointed by an ordinary general meeting of the real-estate investment company; it carries out the verifications and inspections that it considers appropriate at any time throughout the year; it may request sight of any document or ask the management company for a report on the real-estate investment company's situation and present a report on the management thereof to the ordinary general meeting.

The constitutional documents may make execution of the transactions they enumerate contingent on its prior consent.

The real-estate investment company cannot avail itself of the limitations or restrictions deriving from this article in relation to third parties.

Article L. 214-71. - Whoever, directly or through an intermediary, effectively exercises the management, administration or control of a company through or in place of its legal representatives is subject to the same obligations and shall incur the same penalties, if any, that those representatives do.

Article L. 214-72. - Any exchange or conveyance of, or creation of a charge on, the company's real property must be authorised by the ordinary general meeting of members.

The management company may only enter into borrowings, assume debts or make purchases which are payable in arrears on behalf of the company that it manages within a maximum limit set by the general meeting.

The company cannot avail itself of the limitations or restrictions deriving from this article in relation to third parties.

### Subsection 4 General meetings

Article L. 214-73. - The members shall meet at least once each year at an ordinary general meeting to approve the accounts for the previous accounting period.

Each member's number of votes is proportionate to its portion of the share capital. Decisions are taken on a majority of the votes cast by the members present or represented. A general meeting may deliberate validly when first convened only if the members present or represented hold at least one quarter of the capital, or at least half of the capital if an amendment to the constitutional documents is proposed. When it is reconvened, no quorum is required.

The documents to be sent to the members prior to the holding of a general meeting and the notice period and convening arrangements for such meetings are established by decree.

The meeting determines the amount of the profits distributed to the members by way of dividend. In addition, the meeting may decide to distribute the sums deducted from the reserves at its disposal. In this case, the decision expressly indicates the reserve headings from which the deductions are made.

Any dividend distributed without an inventory being taken or on the basis of a fraudulent inventory constitutes a sham dividend.

However, advances on the dividends of previous accounting periods or the current period which are distributed before the accounts for those periods have been approved do not constitute sham dividends if a balance sheet drawn up during, or at the end of, the period and certified by an auditor within the meaning of Article L. 214-79 shows that the company made net profits greater than the amount shown in the advances for the period after making the necessary allocations to depreciation and provisions, after deduction of any earlier losses, and with due allowance made for any profits carried forward.

The management company is authorised to decide to distribute an advance on the dividend and to determine the amount and date of the distribution.

Article L. 214-74. - Any member may be empowered by other members to act as their representative at a meeting with no limitation other than those resulting from the legal or constitutional provisions and relating to the maximum number of votes an individual may cast, both on his own behalf and as a representative.

Any provisions contrary to those of the previous paragraph are deemed not to exist.

For any member's proxy which does not indicate a representative, the chairman of the general meeting casts a vote in favour of the adoption of draft resolutions submitted or approved by the management company and a vote against the adoption of any other draft resolution. For any other vote to be cast, the member must choose a representative who is agreeable to voting as directed by the principal.

Article L. 214-75. - Any member may vote by correspondence using a form worded as determined in an order of the Minister for the Economy. Any contrary provision in the constitutional documents is deemed not to exist.

Only forms received by the company before the meeting is held, and within a time limit determined in that same order, are taken into account for calculation of the quorum. Forms which do not indicate any voting intention or which are abstentions are deemed to be negative votes.

Article L. 214-76. - Any agreement between the company and the management company, or any member of the latter, must be approved by the company's general meeting of members on the basis of reports from the Supervisory Board and the auditors.

Even if no fraud is involved, responsibility for the prejudicial consequences for the company of agreements which are not approved is attributed to the management company responsible or to any member thereof.

Article L. 214-77. - Apart from the instances in which a general meeting is called pursuant to this section, the constitutional documents may stipulate that certain decisions be taken through written consultation between the members.

## Subsection 5 Accounting provisions

Article L. 214-78. - At the end of each accounting period, the management company's executives shall draw up an inventory of the various elements of the assets and liabilities existing on that date.

They shall also prepare the annual accounts and draw up a written management report.

They are required to apply the general accounting plan, duly adapted to the needs and resources of such companies and taking the nature of their business into account, pursuant to procedures which shall be determined by a regulation from the French accounting standards authority (Autorité des Normes Comptables).

The management report shall present the company's situation during the previous accounting period, its foreseeable development, and the important events that have occurred between the date of closure of that accounting period and the date on which the report is drawn up.

In a statement appended to the management report, the management company's executives shall indicate the book value, the realisable value and the replacement value of the company that they manage. The realisable value is equal to the sum of the market value of the real-estate assets and the net book value of the company's other assets. The company's replacement value is equal to the realisable value plus the amount of the fees associated with reconstitution of its assets.

These values are the subject of resolutions which are submitted to the general meeting for approval. During an accounting period, should it prove necessary, the Supervisory Board referred to in Article L. 214-70 may authorise a change to those values based on a reasoned report from the management company.

The documents referred to in this article are made available to the auditors as established by decree.

*Amended by Order No. 2009-79 of 22 January 2009 Art. 6 Official Journal of 23 January 2009*

Article L. 214-79. - Auditing is carried out by one or more auditors.

The auditors inform the Autorité des Marchés Financiers of any irregularities and inaccuracies they uncover in the performance of their duties.

They are legally liable as provided for in Article L. 822-17 of the Commercial Code, but do not incur third-party liability for offences committed by the persons who manage or administer the company unless, having knowledge thereof, they failed to disclose them in their report to the General Meeting.

Actions for damages against the auditors lapse as provided for in Article L. 225-254 of the Commercial Code.

No revaluation of assets can take place unless a special report to the General Meeting has been presented by the auditors and approved by the meeting.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 V 1°, Art. 111, Art. 116 Official Journal of 2 August 2003*

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 27 Official Journal of 7 May 2005*

*Amended by Order No. 2005-1126 of 8 September 2005 Art. 21 Official Journal of 9 September 2005*

*Amended by Order No. 2005-1126 of 8 September 2005 Art. 21 Official Journal of 9 September 2005*

## Subsection 6 Mergers

Article L. 214-80. - With the exception of the cases envisaged in Articles L. 214-124 and L. 214-135, a real-estate investment company may only merge with another real-estate investment company managing comparable assets.

This article's implementing conditions are determined in the decree referred to in Article L. 214-85.

*Amended by Order No. 2005-1278 of 13 October 2005 Art. Official Journal of 14 October 2005*

Article L. 214-81. - The merger shall take place under the supervision of the auditors of each of the companies involved. The merger plan is sent to them at least forty-five days before the extraordinary general meetings called to decide on the merger.

The auditors draw up a report on the terms and conditions applicable to the merger.

The auditors' remit is conducted under terms and conditions identical to those laid down for special merger auditors in Article L. 236-10 of the Commercial Code.

Article L. 214-82. - The merger is approved by an extraordinary general meeting of each of the companies involved.

Article L. 214-83. The extraordinary general meeting of the acquiring company decides on the valuation of the contributions in kind, pursuant to the provisions of Article L. 214-57.

### Subsection 7 Rules of good conduct

*(Subsection number amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 28 Official Journal of 7 May 2005)*

Article L. 214-83-1. The management companies of real-estate investment companies and the persons placed under their authority or acting on their behalf are required to comply with the rules of good conduct designed to ensure investor protection and the reliability of the transactions as laid down by the Autorité des Marchés Financiers, referred to in Articles L. 533-11 to L. 533-16.

*Inserted by Act No. 2001-602 of 9 July 2001 Art. 9 V 4° Official Journal of 11 July 2001*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 V 1° Official Journal of 2 August 2003*

*Amended by Order No. 2007-1490 of 18 October 2010 Art. 1 Official Journal of 19 October 2010*

Article L. 214-84. *Repealed by Act No. 2006-1770 of 30 December 2006 Art. 66 Official Journal of 31 December 2006*

### Subsection 8 Transitional provisions

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 4 Official Journal of 14 October 2005*

Article L. 214-84-1. - Under conditions established by a decree issued following consultation with the Conseil d'Etat, a real-estate investment company may, by means of a demerger, transfer its assets to real-estate collective investment schemes, no matter what form they take.

As an exception to Article L. 214-50, prior to the demerger, the real-estate investment companies are authorised, if need be, to contribute some or all of their assets to the new companies so the units of these companies may be transferred as soon as possible to real-estate collective investment schemes within the context of the demerger.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 4 Official Journal of 14 October 2005*

*Amended by Order No. 2008-1081 of 23 October 2008 Art. 3 Official Journal of 24 October 2008*

Article L. 214-84-2. - The real-estate investment companies shall have five years from the approval of the provisions of the General Regulation of the Autorité des Marchés Financiers relating to real-estate collective investment schemes to convene an extraordinary General Meeting of the partners in order to decide on the question included in the meeting agenda concerning the possibility of transforming into a real-estate collective investment scheme.

This meeting shall choose, under the quorum and majority conditions established by the company's constitutional documents at the date of publication of Order No. 2005-1278 of 13 October 2005 defining the legal framework of real-estate collective investment schemes and the means of transforming real-estate investment companies into real-estate collective investment schemes, which of the two forms of real-estate collective investment scheme referred to in the first paragraph of Article L. 214-89 that it wishes to adopt following the transformation.

If the real-estate collective investment scheme takes the form of a real-estate investment trust, the regulations of the fund must stipulate the introduction of a Supervisory Board as stipulated in Article L. 214-132.

Where a real-estate investment company chooses the real-estate collective investment scheme, this transaction shall not involve any direct or indirect fees for the unitholders.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 4 Official Journal of 14 October 2005*

Article L. 214-84-3. - Under the conditions defined by the General Regulation of the Autorité des Marchés Financiers, the management companies of the real-estate investment company shall inform the following persons of the real-estate collective investment schemes defined in Section 5 of this chapter:

1° The subscribers of units in real-estate investment companies prior to their subscription or purchase, in compliance with the provisions of Articles L. 214-59 et seq.

2° The partners of real-estate investment companies, no later than 12 months following the publication of Order No. 2005-1278 of 13 October 2005 defining the legal framework of real-estate collective investment schemes and the means of transforming real-estate investment companies into real-estate collective investment schemes.

This information shall particularly concern the requirement that real-estate collective investment schemes hold a general meeting under the conditions set forth in Article L. 214-84-2, in order for the partners to vote on the possibility of converting to this scheme.

This information shall be truthful, complete and understandable, and shall be written in easily accessible and understandable terms to allow the subscribers of units or partners to have the basic and necessary information to make an informed decision.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 4 Official Journal of 14 October 2005*

## Section 4 Forestry investment companies (Sociétés d'épargne forestière)

Article L. 214-85. - The primary purpose of a forestry investment company (*société d'épargne forestière*) is the acquisition and management of forestry assets; on the one hand, at least 60% of their assets consist of equity interests in forestry groups or companies whose sole purpose is the ownership of woodlands and forests and, on the other hand, cash and cash equivalents.

The woodlands and forests held by these companies must be managed in accordance with a simple approved management plan.

The units of forestry investment companies are treated in the same way, for tax purposes, as equity interests held in a forestry group, with the exception of Article 885 H of the Code Général des Impôts.

*Amended by Act No. 2001-602 of 9 July 2001 Art. 9 V 1°, 2° Official Journal of 11 July 2001*

Article L. 214-86. - The portion of a forestry investment company's assets which must consist of woodlands and forests is set at 51% if those companies devote, as indicated in a decree issued following consultation with the Conseil d'Etat, a portion of their assets to upgrading or to guaranteeing loans granted by credit institutions approved by the administrative authorities for financing investment, development or operation of woodlands and forests.

*Inserted by Act No. 2001-602 of 9 July 2001 Art. 9 V 1° and 3° Official Journal of 11 July 2001*

Article L. 214-87. - Forestry investment companies and their management companies are subject to the same rules as real-estate investment companies and their management companies.

However:

- The time limit referred to in Article L. 214-54 is increased to two years

- The authorisation of the management company referred to in Article L. 214-67 is subject to a prior opinion from the National Professional Centre for Forestry Property

- As an exception to the first paragraph of Article L. 214-72, a decree issued following consultation with the Conseil d'Etat shall determine the exchanges, disposals or charges which may be effected on the forestry assets of forestry investment companies that constitute normal management transactions and are not subject to authorisation from the ordinary general meeting of members

- As an exception to the first paragraph of Article L. 214-80, a forestry savings company may also merge with a forestry group which manages forestry assets that are subject to simple approved management plans. In this case, the merger is subject to authorisation by the Autorité des Marchés Financiers.

Moreover, a general meeting of members shall approve the simple approved management plans for the woodlands and forests owned by the company.

*Inserted by Act No. 2001-602 of 9 July 2001 Art. 9 V 1° and 3° Official Journal of 11 July 2001*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 V 1° Official Journal of 2 August 2003*

Article L. 214-88. - A decree issued following consultation with the Conseil d'Etat shall determine the implementing provisions for sections 1, 2, 3 and 4 of this chapter.

*Inserted by Act No. 2001-602 of 9 July 2001 Art. 9 V 1° and 3° Official Journal of 11 July 2001*

## SECTION 5 Real-estate collective investment schemes (Organismes de placement collectif immobilier)

*Section inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

### Subsection 1 Common Provisions

*Subsection inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

#### Paragraph 1 Formation and asset structure of real-estate collective investment schemes

*Paragraph inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-89. - Real-estate collective investment schemes (*organismes de placement collectif immobilier*, OPCIs) take the form of either a limited liability real-estate investment company with variable capital, or a real-estate investment trust (*fonds de placement immobilier*, FPI).

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-90. - The purpose of OPCIs is investment in properties that they lease, or that they construct solely for the purpose of leasing, and that they hold either directly or indirectly, including those in a future state of completion, all operations required for their use or their resale, the carrying out of works of any and all type in these properties, particularly operations relating to their construction, renovation and rehabilitation with an eye to leasing them, and, secondarily, the management of financial instruments and deposits. Real-estate assets may not be acquired solely for the purposes of reselling them.

OPCIs may include various categories of units or shares under conditions established respectively by the regulations of the real-estate investment trust, or the constitutional documents of the limited liability real-estate investment company with variable capital, depending on the General Regulation of the Autorité des Marchés Financiers.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-91. - I. - The formation, conversion, merger, demerger or liquidation of a real-estate collective investment scheme is subject to authorisation from the Autorité des Marchés Financiers. The authorisation request, the content of which is specified in the General Regulation of the Autorité des Marchés Financiers, shall, in particular, describe the planned investment policy of the real-estate collective investment scheme as well as its choices of financing, especially its recourse to borrowing.

II. - Real-estate collective investment schemes, the depositary referred to in Article L. 214-117, and the management company, referred to in Article L. 214-119, shall act for the exclusive benefit of the subscribers. They must provide adequate guarantees in respect of their organisation, their technical and financial resources, and the respectability and experience of their managers. They must take the necessary steps to ensure the security of the transactions.

The institutions and persons referred to in Articles L. 214-112, L. 214-117, L. 214-119 and L. 214-120 must act independently of each other.

III. - The Autorité des Marchés Financiers stipulates how and when real-estate collective investment schemes must disclose information to their subscribers, and likewise the position in relation to advertising, and audiovisual advertising in particular, and direct marketing. The General Regulation of the Autorité des Marchés Financiers shall specify the contents of the disclosure document that must be drawn up by these institutions.



IV. - The Autorité des Marchés Financiers may withdraw its authorisation from any real-estate collective investment scheme.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-92. - I. - Under conditions and within limits determined in a decree issued following consultation with the Conseil d'Etat, the assets of a real-estate collective investment scheme shall exclusively consist of:

a) Properties that have been constructed or purchased with a view to leasing them, and the rights *in rem* pertaining to these assets listed in the decree issued following consultation with the Conseil d'Etat referred to in the previous paragraph

b) Units in partnerships that are not admitted to trading on a market for two in Articles L. 421-4, L. 422-1 and L. 423-1, and that meet the following conditions:

1° The partners assume responsibility for liabilities over and beyond their contributions except for cases in which, pursuant to Article L. 214-55 or an equivalent provision in foreign law, they are only responsible for liabilities in proportion to their own share

2° The assets are primarily composed of properties that have been constructed or purchased with a view to leasing them, and the rights *in rem* pertaining to these assets, rights retained by the lessee pertaining to leasing contracts for properties with an eye to their leasing, or direct or indirect equity interests in companies fulfilling the conditions of this paragraph b)

3° Other assets include current account advances referred to in Article L. 214-98, receivables resulting from their principal activity, cash is referred to in i) and the liquid financial instruments referred to in h)

4° The financial instruments that they issue shall not be admitted to trading on a market referred to in Articles L. 421-4, L. 422-1 and L. 423-1

c) Units of partnerships other than those set forth in point b), units or shares in companies other than partnerships that are not admitted to trading on a market referred to in Articles L. 421-4, L. 422-1 et L. 423-1. These companies shall meet the following conditions:

1° Liability of the partners or shareholders shall be limited to the amount of their contributions

2° The assets are primarily composed of properties that have been constructed or purchased with a view to leasing them, and the rights *in rem* pertaining to these assets, rights retained by the lessee pertaining to leasing contracts for properties with an eye to their leasing, or direct or indirect equity interests in companies fulfilling the conditions of 1°, 2° and 4° of b) or this paragraph c)

3° The financial instruments that they issue shall not be admitted to trading on a market referred to in Articles L. 421-4, L. 422-1 and L. 423-1

d) Shares traded on a market referred to in Articles 421-4, L. 422-1 and L. 423-1, and issued by a company whose assets primarily consist of properties that have been constructed or purchased with a view to leasing them, and the rights *in rem* pertaining to these assets, rights retained by the lessee pertaining to leasing contracts for properties with an eye to their leasing, or direct or indirect equity interests in companies whose assets meet the same conditions

e) Units or shares in real-estate investment companies as well as units, shares or rights held in institutions under foreign law with a similar purpose, regardless of their legal form

f) The financial securities referred to in paragraph II of Article L. 211-1 and Article L. 211-41 admitted to trading on a market referred to in Articles L. 421-1, L. 422-1 and L. 423-1 as

well as financial futures under conditions established by Article L. 214-94

g) Units or shares in OPCIs, with the exception of those referred to in subsections 9 to 14 of Section 1 of Chapter IV of Part I of Book II, authorised by the Autorité des Marchés Financiers or authorised to be marketed in France

h) Deposits and liquid financial instruments as defined by decree issued following consultation with the Conseil d'Etat

i) Cash as defined by decree issued following consultation with the Conseil d'Etat

j) Current-account advances granted in application of Article L. 214-98.

A decree issued following consultation with the Conseil d'Etat shall define rules concerning risk spreading and risk caps, particularly in terms of construction, which are applicable to the real-estate investment company.

II. - A real-estate collective investment scheme and the companies mentioned in paragraph I b) may not hold units, shares, financial rights or voting rights in an entity, no matter what its form, whose partners or members are indefinitely and jointly liable for the entity's debts.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

*Amended by Act No. 2006-1771 of 30 December 2006 Art. 140 Official Journal of 31 December 2006*

*Amended by Order No. 2007-544 of 12 April 2007 Art. 1 Official Journal of 13 April 2007*

*Amended by Order No. 2007-1490 of 18 October 2010 Art. 1 Official Journal of 19 October 2010*

*Amended by Order No. 2009-15 of 8 January 2009 Art. 1 Official Journal of 9 January 2009*

Article L. 214-93. - I. - Under conditions and within limits determined in a decree issued following consultation with the Conseil d'Etat, the assets of a real-estate collective investment scheme shall consist of:

1° At least 60% real-estate assets. In the case of a limited liability real-estate investment company with variable capital, these real-estate assets shall be those mentioned in paragraph I a) to e) of Article L. 214-92, with the assets referred to in points a) to c) of paragraph I of the aforementioned article representing at least 51% of the assets. In the case of a real-estate investment trust, the assets are those referred to in paragraph I a) and b) of Article L. 214-92 and, should they consist of a controlled equity interest, the real-estate investment trust's units and the units or shares in institutions under foreign law with an equivalent purpose and similar form referred to in paragraph I c).

2° At least 10% of the assets referred to in paragraph I h) and i) of Article L. 214-92. These assets must be free of all securities and rights in favour of third parties.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

*Amended by Act No. 2006-1771 of 30 December 2006 Art. 140 Official Journal of 31 December 2006*

Article L. 214-94. - A real-estate collective investment scheme may, within the limits and under conditions established by decree, conclude financial futures contracts.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

*Amended by Order No. 2007-544 of 12 April 2007 Art. 1 Official Journal of 13 April 2007*

Article L. 214-95. - A real-estate collective investment scheme may enter into borrowings within the limit of 40% of the value of the real-estate assets referred to in points a) to c) and e) of paragraph I of Article L. 214-92.

Calculation of this limit shall be done by factoring in all borrowings and debts subscribed to by the real-estate collective investment scheme, by the companies referred to in points b) and c) of paragraph I of Article L. 214-92 and by the institutions referred to in point e) of that same paragraph I, up to the percentage of the scheme's direct or indirect equity interests in these companies or schemes.

Reporting obligations with respect to shareholders and unitholders concerning the conditions under which the real-estate collective investment scheme may resort to borrowing are set out in the General Regulation of the Autorité des Marchés Financiers.

A decree issued following consultation with the Conseil d'Etat shall determine this article's implementing conditions, particularly with respect to the capacity and the type of the borrowing.

*Amended by Act No. 2006-1770 of 30 December 2006 Art. 66 Official Journal of 31 December 2006*

*Amended by Act No. 2006-1771 of 30 December 2006 Art. 140 Official Journal of 31 December 2006*

Article L. 214-96. - A real-estate collective investment scheme may borrow cash with a limit of 10% of the value of its assets other than those referred to in Article L. 214-95.

The implementing conditions of the limit referred to in the preceding paragraph are established by a decree issued following consultation with the Conseil d'Etat.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-97. - Within the limits and under conditions determined in a decree issued following consultation with the Conseil d'Etat, a real-estate collective investment scheme may agree to securities on its assets which are required for concluding contracts relating to its activity, particularly those concerning the implementation of borrowings referred to in Articles L. 214-95 and L. 214-96 as well as those referred to in Article L. 214-94.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-98. - Within the limits and under conditions determined in a decree issued following consultation with the Conseil d'Etat, a real-estate collective investment scheme may agree to current account advances granted to the companies referred to in points b) and c) of paragraph I of Article L. 214-92, in which it holds, either directly or indirectly, at least 5% of the equity capital.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-99. - The rules concerning risk spreading, risk caps and quotas referred to in, respectively, Articles L. 240-92 and L. 214-93 must be complied with no later than three years following the date of issue of the approval of the real-estate collective investment scheme.

A decree issued following consultation with the Conseil d'Etat shall determine the thresholds, the cases and the terms under which, exceptionally and for a limited time, the quotas stipulated in Article L. 214-93 may be waived.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-100. - Under the terms and conditions established by the General Regulation of the Autorité des Marchés Financiers, any unitholder or shareholder must inform the person referred to in the disclosure document stipulated in paragraph III of Article L. 214-91 as soon as he crosses the threshold of 10% of units or shares in the real-estate collective investment scheme.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-101. - Where a shareholder or unitholder, who holds more than 20% and less than 99% of the shares or units in the real-estate collective investment scheme, asks to redeem shares or units, this purchase may be provisionally suspended under the conditions stipulated in the General Regulation of the Autorité des Marchés Financiers, when it exceeds a percentage of the number of units or shares in the real-estate collective investment scheme established by this decree.

In order to calculate the percentages referred to in the preceding paragraph, the shares or units held by the entities that control, within the meaning of Article L. 233-16 of the Commercial Code, the person requesting the redemption or are controlled under the same conditions by that person as well as the units or shares in entities which are controlled under the same conditions by the entity which controls that person.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-102. - Creditors whose claim is a result of any transaction concerning the assets of the real-estate collective investment scheme may claim against those assets only, with the exception of the assets referred to in paragraph 2° of Article L. 214-93.

A depositary's creditors may not sue for payment of their claims against the assets of a real-estate collective investment scheme for which it provided custody.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-103. - The minimum net asset value of the real-estate collective investment scheme, as defined in the General Regulation of the Autorité des Marchés Financiers, shall be established by decree.

If this obligation is not met within a period of three years starting from the date of issue of approval of the real-estate collective investment scheme, the scheme is dissolved in the unitholders or shareholders shall be reimbursed up to the level of their rights in the scheme, or in the company, under the conditions stipulated by the General Regulation of the Autorité des Marchés Financiers.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-104. - The General Regulation of the Autorité des Marchés Financiers shall determine the terms of issue, subscription, transfer and redemption for the units or shares issued by real-estate collective investment schemes.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-105. - The real-estate collective investment scheme is required to take out an insurance policy to cover its civil liability associated with the properties it owns.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

## Paragraph 2 Accounting and financial provisions

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-106. - The regulations of a real-estate investment trust or the constitutional documents of a limited liability real-estate investment company with variable capital (SPPICAV) shall determine their accounting periods, which shall not exceed 12 months. The first accounting period may nevertheless be of longer duration, but shall not exceed eighteen months.

Within six weeks of the end of each half-year of accounting period, the SPPICAV or the real-estate investment trust shall draw up an inventory of assets of the real-estate collective investment scheme held by the depositary.

The SPPICAV or the real-estate investment trust shall draw up the annual financial statements of the real-estate collective investment scheme as well as a written report on the management of the real-estate collective investment scheme, whose contents, defined by decree issued following consultation with the Conseil d'Etat, shall in particular describe the debts and cash position of the real-estate collective investment scheme. This report shall be made available to the shareholders or unitholders under conditions and within limits described by the General Regulation of the Autorité des Marchés Financiers.

As an exception to the provisions of the first paragraph of Article L. 123-22 of the Commercial Code, the accounts of a real-estate collective investment scheme may be maintained in any currency unit, as established by decree.

The documents referred to in this article shall be made available to the auditors as established by a decree issued following consultation with the Conseil d'Etat.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

*Amended by Act No. 2006-1770 of 30 December 2006 Art. 66 Official Journal of 31 December 2006*

Article L. 214-107. - The net profit of a real-estate collective investment scheme shall be equal to the sum of:

1° The income relating to the real-estate assets referred to in points a) to c) and e) of paragraph I of Article L. 214-92 for the open-ended investment company investing mainly in real estate, and in points a), b) and e) of paragraph I of the same article for the real-estate investment trust, less any associated fees and charges

2° Income and remuneration generated by the management of the other assets, less any associated fees and charges

3° Any other income, less management fees, other fees and charges, which may not be directly associated with the assets referred to in paragraphs 1° and 2°.

The terms for allocating fees and charges referred to in paragraph 1° to 3° shall be established by decree.

For the purposes of this article, the income and interest earned by a company referred to in paragraph I b) of Article L. 214-92 and by a real-estate investment trust or a scheme under foreign law, as referred to in the final sentence of paragraph 1° of Article L. 214-93, shall be deemed to have been carried out by the real-estate investment trust up to the level of its direct and indirect rights in that company or in that trust.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

*Amended by Act No. 2006-1771 of 30 December 2006 Art. 140 Official Journal of 31 December 2006*

Article L. 214-108. - The payment of the funds available for distribution, which are defined in Articles L. 214-128 and L. 214-140, shall be carried out within five months of the close of the accounting period.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-109. - Under the conditions and with a frequency provided for in the General Regulation of the Autorité des Marchés Financiers, limited liability real-estate investment companies with variable capital and the real-estate investment trust's management companies shall prepare an information document that is distributed to their shareholders and unitholders, respectively.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-110. - I. - The auditor shall certify the annual accounts of the real-estate collective investment scheme. Under conditions defined by decree issued following consultation with the Conseil d'Etat, he shall make a report, as applicable, to the general assembly of the limited liability real-estate investment company with variable capital or the real-estate investment trust's management company concerning mergers, contributions in kind, distribution of advances, demergers, winding-up and liquidation of the real-estate collective investment scheme.

He shall, prior to its publication or distribution, under conditions established by a decree issued following consultation with the Conseil d'Etat, certify the accuracy of the periodic information referred to in Article L. 214-109.

II. - The provisions of Article L. 214-14 apply equally to the auditor of the real-estate collective investment scheme.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

## Paragraph 3 Appraisal of real-estate assets

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-111. - Under conditions established by the General Regulation of the literally day, the properties and rights *in rem* held, either directly or indirectly, by the real-estate collective investment scheme and by the companies referred to in paragraph I b) and c) of Article L. 214-92 shall be appraised by two real-estate appraisers who shall act independently of each other. They shall jointly produce, under their responsibility, a written summary report of their appraisal mission.

The limited liability real-estate investment company with variable capital (SPPICAV) or the real-estate investment trust management company shall make all reasonable arrangements to allow the appraisers to carry out their mission.

The General Regulation of the Autorité des Marchés Financiers shall determine the appraisers' mission, and in particular the allotment of tasks between them, the rules for appraisal and the terms under which the report shall be drawn up.

This report shall be sent to the SPPICAV, to the trust's management company, to the depositary and to the auditor, as well as to every shareholder or unitholder in the real-estate collective investment scheme who requests it under the

conditions established by a decree issued following consultation with the Conseil d'Etat.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-112. - The real-estate appraisers must have the appropriate experience, skills and organisational structures for the performance of their real-estate appraisal function.

Prior to his appointment, every real-estate appraiser shall inform the SPPICAV or the real-estate investment trust's management company whether or not he has an insurance policy covering damages arising from his professional civil responsibility.

This information shall appear in the management report drawn up by the SPPICAV or the trust management company. The report shall list, if any, the level of guarantees provided by the civil liability insurance.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-113. - The real-estate appraiser, any member of the executive body and any person who, in any capacity whatsoever, is director or manager of a real-estate appraiser, is employed by said appraiser, is bound by professional secrecy under the conditions and on pain of the penalties stipulated in Articles 226-13 and 226-14 of the Criminal Code.

In the performance of their mission, the real-estate appraisers are released from professional secrecy in relation to the auditor of the real-estate collective investment scheme, the Autorité des Marchés Financiers, the Autorité de Contrôle Prudentiel and the tax authorities.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

*Amended by Decree No. 2005-1564 of 15 December 2006 Art. 14 Official Journal of 16 December 2006*

*Amended by Order No.2010-76 of 21 January 2010 Art. 2 Official Journal of 22 January 2010*

Article L. 214-114. - Under the conditions provided for in the General Regulation of the Autorité des Marchés Financiers, each real-estate appraiser shall be appointed by the SPPICAV or the real-estate investment trust management company for a period of four years, following approval by the Autorité des Marchés Financiers.

The SPPICAV or the real-estate investment trust management company may terminate the functions of the real-estate appraiser prior to the term stipulated in the first paragraph only after having obtained approval from the Autorité des Marchés Financiers.

The identity of the appointed real-estate appraisers shall be included in the disclosure document, provided for in the General Regulation of the Autorité des Marchés Financiers, of the real-estate collective investment scheme.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-115. - The real-estate appraiser shall be liable, both with respect to the SPPICAV or the real-estate investment trust management company and the depositary, for the harmful consequences of their misconduct and negligence incurred while carrying out their duties.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-116. - SPPICAVs or real-estate investment trusts management companies are required to supply the real-estate appraisers that they have appointed with all documents, information and investigative means that will help them carry out their duties.

Where the real-estate appraisers are unable to carry out some or all of their duties because, in spite of their requests, they were unable to obtain the elements or the investigative means referred to in the first paragraph, they shall mention this in their report. This report shall detail the steps they took. They shall also inform the Autorité des Marchés Financiers of the situation, subject to the terms defined in the Autorité's General Regulation.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

#### Paragraph 4 Depositaries of real-estate collective investment schemes

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-117. - The depositary shall be distinct from the real-estate collective investment scheme, the management company and the real-estate appraiser. It shall be either a credit institution or investment firm with approval to supply the services referred to in paragraph 1° of Article L. 321-2. The depositary shall be appointed by the real-estate collective investment scheme, and be listed in the disclosure document stipulated in paragraph III of Article L. 214-91.

The depositary's registered office must be in France.

Its responsibility is not affected by the fact of it entrusting some or all of the assets in its custody to a third party.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-118. - I. - The depositary's duties include:

1° The safekeeping and the oversight of the inventory of the real-estate collective investment scheme's assets, with the exception of the assets referred to in paragraph I a) of Article 214-92 and of operating receivables

2° The oversight of the inventory of assets of the real-estate collective investment scheme referred to in paragraph I a) of Article L. 214-92 and of operating receivables

3° Ensuring the legal and regulatory compliance of the decisions of the SPPICAV and the management company.

The extent of the depositary's duties and the terms under which it carries out those duties are stipulated in the General Regulation of the Autorité des Marchés Financiers.

II. - The depositary shall also ensure, on behalf of all unitholders, as stipulated in the Code Général des Impôts, the payment of any tax on real-estate capital gains earned either directly or indirectly by the real-estate investment trust.

*Amended by Order No. 2008-1081 of 23 October 2008 Art. 4 Official Journal of 24 October 2008*

#### Paragraph 5 The real-estate collective investment scheme's management company

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-119. - The management of real-estate collective investment schemes shall be carried out by a portfolio



management company referred to in Article L. 532-9 and designated in the constitutional documents or the regulations of the real-estate collective investment scheme.

Where it manages at least one OPCI, the portfolio management company may, as its main business, manage the real-estate assets concerned by specific management mandates or real-estate investment companies and, subsidiarily, it may act as a real-estate investment consultant. For the purposes of managing its OPCIs, real-estate investment companies or real-estate assets within the framework of its management mandates, the portfolio management company shall have a specific program of operations.

It may also be the director of companies in which the OPCIs that it manages holds equity interests as referred to in paragraph I b) and c) of Article L. 214-92.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

*Amended by Act No. 2006-1770 of 30 December 2006 Art. 66 Official Journal of 31 December 2006*

### Subsection 2 Provisions applicable to limited liability real-estate investment companies with variable capital (Sociétés de placement à prépondérance immobilière à capital variable)

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-120. - The limited liability real-estate investment company with variable capital (*société de placement à prépondérance immobilière à capital variable*, SPPICAV) is an open-ended public limited company that is subject to the rules of this subsection.

Subject to the provisions of Articles L. 214-101 and L. 214-126, and under the conditions established by the General Regulation of the Autorité des Marchés Financiers, shares in the SPPICAV shall be issued and redeemed at the request of the shareholders at their net asset value plus or minus the fees and commissions, as applicable.

The amount of capital shall, at all times, be equal to the net asset value of the SPPICAV, after deduction of the sums available for distribution indicated in Article L. 214-128.

The initial capital of and SPPICAV may not be less than an amount established by a decree issued following consultation with the Conseil d'Etat.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

*Amended by Act No. 2006-1770 of 30 December 2006 Art. 66 Official Journal of 31 December 2006*

Article L. 214-121. - As an exception to, respectively, the first paragraph of Article L. 225-51-1, the first paragraph of Article L. 225-53 and the third paragraph of Article L. 225-59 of the Commercial Code, the duties of the managing director, deputy managing director or those of the chairman of the Executive Board or the sole general manager shall be performed, as applicable, by the management company.

The management company shall appoint a permanent representative, who shall be subject to the same conditions and obligations, and assume the same liability as if he exercised one of the functions referred to in the first paragraph in his own name, without prejudice to the joint liability of the company he represents.

Where it terminates the functions of its representative, the management company is required to appoint his replacement at the same time.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-122. - The SPPICAV and management company shall be individually or jointly liable, as required, with respect to third parties and shareholders, for any violation of the laws or regulations applicable to SPPICAVs, for any breach of the company's constitutional documents, and for any wrongful act.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-123. - The provisions of paragraphs 1, 3 to 8, of the second indent of paragraph 9, and of paragraphs 10 and 11 of Article L. 214-17 shall equally apply to SPPICAVs.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-124. - A SPPICAV may be formed by cash contributions, in-kind contributions of real-estate assets referred to in Article L. 214-92, merger or demerger. It may also be created by merger, demerger or transformation of real-estate investment companies.

In-kind contributions may be made in a SPPICAV after its constitution, particularly in the case of a merger with a real-estate investment company, or another SPPICAV, or when a real-estate investment company, via demerger, transfers to it a portion of its assets.

Payment of contributions and, after constitution of the company, share subscriptions may only be made by set-off with liquid and payable receivables held by the company.

The auditor shall assess, under his own responsibility, the value of any in-kind contribution, in light of the appraisal carried out by the two real-estate appraisers in complying with the conditions referred to in Article L. 214-112 and appointed by the management company. The auditor's report shall be appended to the constitutional documents and filed with the registry of the commercial court. The constitutional documents shall contain the valuation of contributions in kind carried out during the constitution of the SPPICAV. In-kind contributions made during the life of the company shall be disclosed to shareholders, under the conditions defined by the General Regulation of the Autorité des Marchés Financiers. A decree issued following consultation with the Conseil d'Etat sets forth this article's implementing conditions.

The General Regulation of the Autorité des Marchés Financiers shall establish, if need be, as an exception to the second paragraph of Article L. 225-128 of the Commercial Code, the conditions and limits of contributions carried out both during the constitution as well as during the life of the company.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

*Amended by Act No. 2006-1770 of 30 December 2006 Art. 66 Official Journal of 31 December 2006*

Article L. 214-125. - Articles L. 224-1, L. 224-2, L. 225-3 to L. 225-16, L. 225-258 to L. 225-270, L. 231-1 to L. 231-8, L. 242-31 and L. 247-10 of the Commercial Code are not applicable to SPPICAVs.

Cross-border mergers of companies referred to in this subsection are not governed by Articles L. 236-25 to L. 236-32 of the Commercial Code.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

*Amended by Act No. 2008-649 of 3 July 2008 Art. 2 Official Journal of 4 July 2008*

Article L. 214-126. - Redemption by the company of its shares may be provisionally suspended by the Board of Directors or the Executive Board, **in exceptional circumstances** and if the shareholders' interests demand it, pursuant to the conditions established by the General Regulation of the Autorité des Marchés Financiers.

The General Regulation of the Autorité des Marchés Financiers shall establish the cases and conditions under which the constitutional documents of the SPPICAV may provide for the issue of shares to cease provisionally.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 68 Official Journal of 23 October 2010*

Article L. 214-127. - Thirty days at least before the general meeting called to approve them, the SPPICAV is also required to publish its profit and loss account and its balance sheet. It is exempted from publishing them again after the general meeting, unless that meeting has amended them.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

*Amended by Act No. 2006-1770 of 30 December 2006 Art. 66 Official Journal of 31 December 2006*

Article L. 214-128. - I. - The sums available for distribution by a SPPICAV during a financial year shall consist of:

1° Profits available for distribution stemming from income earned by the company that are equal to the net profit referred to in Article L. 214-107, plus the retained earnings and plus or minus the balance shown in the asset-liability adjustment account defined by decree

2° Capital gains from the sale of assets carried out during the financial year, net of fees and minus capital gains net of costs earned during the same tax year, plus undistributed net capital gains earned in previous financial years, plus or minus the balance shown in the asset-liability adjustment accounts defined by decree.

II. - Of the sums defined in I, the company shall distribute:

1° At least 85% of the profits available for distribution stemming from income earned from the assets referred to in paragraph I a) of Article L. 214-92, during the financial year in which they were earned. In order to determine the amount to be distributed, a lump sum allowance equal to 1.5% of the cost price of the properties referred to in paragraph I a) of Article L. 214-92 held directly by the company shall be deducted from the net profits.

2° At least 50% of the capital gains earned during the transfer of the assets referred to in paragraph I a) of Article L. 214-92, shares in companies referred to in paragraph I b) or c) of the same article that are not liable for corporation tax or an equivalent tax, units or shares in companies referred to in paragraph I c) of the same article where they benefit from an exemption from corporation tax for their real-estate activities, and units or shares in schemes referred to in paragraph I e) of the same article, during the financial year following year in which they were earned, at the latest. To determine the amount to be distributed, the net capital gains earned on properties referred to in paragraph I a) of Article L. 214-92 held directly by the company shall be increased by the lump-sum allowance carried out in compliance with paragraph 1° since their acquisition.

3° The entire amount of the portion of profits available for distribution stemming from earnings distributed by the companies referred to in paragraph I c) of Article L. 214-92 where they benefit from an exemption from corporation tax on their real-estate activities during the financial year in which they were earned.

III. - For the purposes of subparagraphs 1° and 2° of paragraph II, the profits and capital gains earned by a company referred to in points b) or c) of paragraph I of Article L. 214-92, and it is not liable for corporation tax or an equivalent tax, as well as the profits and capital gains earned by the schemes referred to in paragraph I e) of the same article, shall be deemed to have been earned, up to the amount of its rights, by the SPPICAV during the financial year following the one in which the company referred to in paragraph I b) or c) of Article L. 214-92 or the scheme referred to in paragraph I e) of the same article earned the profits or capital gains.

Profits and capital gains relating to real-estate assets located outside of France, where tax treaties signed with France for the purposes of avoiding double taxation stipulate that these profits and capital gains may be taxed in the place where the assets are located, shall not be taken into account for the determination of amounts available for distribution.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

*Amended by Act No. 2006-1771 of 30 December 2006 Art. 140 Official Journal of 31 December 2006*

Article L. 214-129. - As an exception to the provisions of the Commercial Code, the conditions of liquidation and the arrangements for dividing up the assets shall be determined by the constitutional documents. The management company shall assume the liquidator's function, under the supervision of the depositary, failing which a liquidator shall be appointed by the court at the request of any shareholder, from the list of approved portfolio management companies.

### Subsection 3 Specific rules applicable to real-estate investment trusts

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-130. - Without prejudice to the provisions of Article L. 214-101 and the second and third paragraphs of Article L. 214-136, the real-estate investment trust, which does not have legal personality, is a co-ownership consisting of real-estate assets, financial instruments and other assets as defined in Article L. 214-92, whose units shall be, under the conditions set forth in the General Regulation of the Autorité des Marchés Financiers, issued and redeemed at the request of the holders at their net asset value plus or minus fees and commissions, as applicable.

The provisions of the Civil Code that relate to joint ownership do not apply to real-estate investment trusts, and nor do those of Articles 1871 to 1873 of that same code that relate to holding companies.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-131. - In all cases in which provisions relating to real-estate property or companies and financial instruments require that the surname, the names and address of the holder of the asset or security be indicated, and also in the case of all transactions carried out on behalf of the co-owners, the name of the real-estate investment trust or, if any, a subfund of the trust, may be validly substituted for those of all of the co-owners.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-132. - The real-estate investment trust shall, under the conditions stipulated by the General Regulation of the Autorité des Marchés Financiers, be set up by a portfolio management company charged with its management.

The management company shall draw up the trust's regulations.

These regulations shall stipulate the creation of a Supervisory Board, consisting solely of unitholders' representatives. The Board shall have no less than five and no more than nine members, including a chair elected from among the members; the chair shall oblige them to exercise discretion with regard to confidential information. The Board may not be involved in managing the trust. The General Regulation of the Autorité des Marchés Financiers shall establish the conditions under which the Board carries out its duties, the terms and conditions of the appointment of its members, as well as the resources at their disposal. Members of the Board shall be liable for any personal misconduct committed during the fulfilment of their mandate. They shall not be liable whatsoever for the actions of the management and the results of those actions. The General Regulation of the Autorité des Marchés Financiers establishes the rules concerning the holding of multiple mandates within Supervisory Boards, and determines incompatibility rules.

Whenever it deems necessary and at least once per year, the Supervisory Board shall draw up a report of its activities. The General Regulation of the Autorité des Marchés Financiers establishes the conditions under which this report is disclosed to the unitholders.

The preceding paragraph shall not apply when the disclosure document referred to in paragraph III of Article L. 214-91 stipulates that the real-estate management trust is limited to 20 unitholders at most or to a category of investors whose characteristics are defined in the General Regulation.

The subscription or purchase of a real-estate investment trust's units entails acceptance of the trust's rules.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

*Amended by Act No. 2006-1770 of 30 December 2006 Art. 66 Official Journal of 31 December 2006*

Article L. 214-133. The real-estate investment trust is represented in regard to third parties by the company responsible for its management. That company may bring legal proceedings to defend or assert the unitholders' rights or interests.

The real-estate investment trust's principal administrative establishment is located in France.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-134. - The management company is liable towards third parties or unitholders for any violations of the laws or regulations applicable to real-estate investment trusts, for any breach of the trust's regulations, and for any wrongful act.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-135. - A real-estate investment trust may be formed by cash contributions, in-kind contributions of the real-estate assets referred to in Article L. 214-92, merger or demerger. It may also be created by merger, demerger or transformation of real-estate investment companies.

In-kind contributions may be made in a real-estate investment trust after its constitution, particularly in the case of a merger with a real-estate investment company, or another real-estate investment trust, or when a real-estate investment company, via demerger, transfers to it a portion of its assets.

Payment of contributions and, after constitution of the trust, unit subscriptions may only be made by set-off with liquid and payable receivables held by the trust.

The General Regulation of the Autorité des Marchés Financiers establishes the conditions and sets limits on contributions to the trust.

The creation of a trust via merger or demerger of real-estate investment companies, as well as the transformation of real-estate investment companies into real-estate investment trust, shall involve the winding-up of the companies concerned, and the complete transfer of their assets to the trust without need for liquidation.

The auditor shall assess, under his own responsibility, the value of any in-kind contribution, in light of the appraisal carried out by the two real-estate appraisers in complying with the conditions referred to in Article L. 214-112 and appointed by the management company. Where an in-kind contribution is made during the creation of a real-estate investment trust, regulations shall contain the appraisal of these contributions. The auditor's report shall be appended to the regulations. It shall be made available to the unitholders. In-kind contributions made after the constitution of the trust shall be disclosed to unitholders, under the conditions defined by the General Regulation of the Autorité des Marchés Financiers.

A decree issued following consultation of the Conseil d'Etat sets forth this article's implementing regulations.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

*Amended by Act No. 2006-1770 of 30 December 2006 Art. 66 Official Journal of 31 December 2006*

Article L. 214-136. - The units are fully paid up upon issue.

Redemption by the trust of its units may be provisionally suspended by the management company **in exceptional circumstances** and if the unitholders' interests demand it, pursuant to the conditions established in the General Regulation of the Autorité des Marchés Financiers.

The General Regulation of the Autorité des Marchés Financiers shall determine the cases in which a trust's regulations may provide for the issue of shares to cease provisionally, and the conditions applicable thereto.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-137. - The provisions of Article L. 214-29 shall be applicable to real-estate investment trusts.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

*Amended by Act No. 2010-1249 of 23 October 2010 Art. 68 Official Journal of 23 October 2010*

Article L. 214-138. - I. - The management company is required to subscribe to the declarations stipulated in Article L. 233-7 of the Commercial Code in respect of all the shares held by the real-estate investment trusts it manages.

II. - The provisions of Articles L. 233-14 and L. 247-2 of the Commercial Code are applicable to the management company.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-139. - The companies referred to in paragraph I b) of Article L. 214-92 in which the real-estate investment trust holds either direct or indirect equity interests, are governed by Article 8 of the Code Général des Impôts, and shall not be liable, de jure or as an option, for corporation tax or equivalent tax, and may not hold, either directly or indirectly, rights held as a lessee related to leasing contracts.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-140. - I. - The sums available for distribution by a real-estate investment trust during a financial year shall consist of:

1° Profits available for distribution stemming from income earned by the trust that are equal to the net profit referred to in Article L. 214-107, plus the retained earnings and plus or minus the balance shown in the asset-liability adjustment account defined by decree

2° Capital gains from the sale of the assets referred to in paragraph I a) and b) of Article L. 214-92, and in paragraph I e) of the same article as defined in the final sentence of subparagraph 1° of Article L. 214-93, carried out during the financial year, plus undistributed net capital gains earned in previous financial years, and, as the case may be, plus or minus the balance shown in the asset-liability adjustment accounts defined by decree

3° Capital gains from the sale of assets other than those referred to in paragraph I a) and b) of Article L. 214-92, carried out during the financial year, net of fees and minus capital gains net of costs earned during the same tax year, plus undistributed net capital gains earned in previous financial years, and, as the case may be, plus or minus the balance shown in the asset-liability adjustment accounts defined by decree

For the purposes of paragraph I, the income and capital gains earned by a company referred to in paragraph I b) of Article L. 214-92 and by a real-estate investment trust or a scheme under foreign law, as referred to in the final sentence of subparagraph 1° of Article L. 214-93, shall be deemed to have been earned by the real-estate investment trust up to the level of its direct and indirect rights in that company or in that trust.

II. - The real-estate investment trust shall distribute:

1° At least 85% of the profits available for distribution within the meaning of subparagraph 1° of paragraph I concerning the following assets:

a) Real-estate assets referred to in paragraph I a) of Article L. 214-92 held directly by the trust or by an intermediary, as the case may be, of a company referred to in Article L. 214-139 or of a real-estate investment trust or a similar scheme under foreign law, referred to in the final sentence of subparagraph 1° of Article L. 214-93, during the financial year that these profits were made. In order to determine the amount to be distributed, a lump sum allowance equal to 1.5% of the cost price of the properties held directly by the trust shall be deducted from the net profits.

b) Other assets held either directly by the trust or an intermediary company referred to in Article L. 214-139 during the financial year in which these profits were made.

2° At least 85% of the capital gains available for distribution, referred to in subparagraph 2° of paragraph I, earned during the financial year, minus, if need be, the allowance stipulated in paragraph I of Article 150 VC of the Code Général des Impôts, earned by the trust or by an intermediary company referred to in Article L. 214-139:

a) During the sale of real-estate assets referred to in paragraph I a) of Article L. 214-92 during the year the sale took place

a) During the sale of units in companies referred to in paragraph I b) of Article L. 214-92 during the year the sale took place

c) During the sale of units of the real-estate investment trusts or schemes under foreign law, as referred to in the final sentence of subparagraph 1° of Article L. 214-93.

3° At least 85% of the capital gains earned directly by the trust or, as the case may be, by an intermediary company referred to in Article L. 214-139, by a real-estate investment trust or a scheme under foreign law, as referred to in the final sentence of subparagraph 1° of Article L. 214-93, during the sale of the assets other than those mentioned in subparagraph 2°, during the financial year in which they were earned.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

*Amended by Act No. 2006-1771 of 30 December 2006 Art. 140 Official Journal of 31 December 2006*

Article L. 214-141. - As an exception to the provisions of Article L. 214-108, payment of sums related to capital gains referred to in subparagraph 2° of paragraph II of Article L. 214-140 must take place prior to the last day of the sixth month following the sale of these aforementioned assets.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-142. - The unitholders or their assigns cannot initiate the division of the real-estate investment trust.

The unitholders are liable for the co-ownership's debts only within the limits of the trust's assets and in proportion to their own share.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-143. - The conditions of liquidation and the arrangements for dividing up the assets are determined by the rules of the real-estate investment trust. The management company shall assume the liquidator's functions, under the supervision of the depositary. Failing this, a liquidator shall be appointed by the courts at the request of any unitholder.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

## Subsection 2 - Real-estate collective investment schemes with streamlined operating rules

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-144. - A real-estate collective investment scheme with streamlined operating rules may be established.

- Units or shares in a real-estate collective investment scheme with streamlined operating rules may be subscribed and purchased only by qualified investors referred to in Article L. 411-2 and by foreign investors belonging to an equivalent category under the law of the country in which their registered office is located.

The General Regulation of the Autorité des Marchés Financiers shall determine the conditions under which the units or shares in such schemes may be made available to other



investors in keeping, *inter alia*, with the nature thereof and the level of risk that the scheme presents.

The depositary or the person designated for that purpose in the scheme's rules or constitutional documents shall ensure that the subscriber or purchaser is an investor as described in the previous paragraph. It shall also ensure that the subscriber or purchaser has effectively declared that he was informed that the said scheme was governed by the provisions of this subsection.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-145. - A real-estate collective investment scheme with streamlined operating rules may, under conditions and within limits determined in a decree issued following consultation with the Conseil d'Etat, be exempt from the limit stipulated in Articles L. 214-93 to L. 214-97.

The units or shares in a real-estate collective investment scheme with streamlined operating rules may give rise to different rights on the net assets or the income from the scheme as well as to conditions of issue, sale or redemption that depart from Article L. 214-126, as well as from the second and third paragraphs of Article L. 214-136, under conditions defined in the constitutional documents of the real-estate collective investment scheme with streamlined operating rules or the regulations of the real-estate collective investment scheme.

As an exception to, respectively, the provisions of 1 of Article L. 214-17 to which Article L. 214-123 refers, and the first paragraph of Article L. 214-136, the constitutional documents of a SPPICAV, or the regulations of a real-estate investment trust may stipulate staggered payment for subscribed units or shares. These units or shares shall be in registered form.

Where the units or shares are not fully paid up, the subscriber and the successive assignees are jointly and severally liable for the amount which is not paid up. If the unitholder or shareholder should fail to pay the sums remaining due in respect of the units or shares held at the time specified by the SPPICAV, a formal demand shall be sent to him. If there is no response to the said demand one month after delivery, the fund's management company or the SPPICAV may, without any authorisation from the courts, assign those units or shares or, under the conditions stipulated by the scheme's regulations or constitutional documents, suspend the right to payment of the sums available for distribution referred to in Article L. 214-128. Once the principal and interest of the sums due have been paid, the shareholder or unitholder may request the payment of any unallocated sums available for distribution. However, a subscriber or assignee who has assigned his units or shares ceases to be liable for making the payments not yet called by the fund's management company or the SPPICAV, two years after the book transfer of the assigned units or shares.

The regulations of the real-estate investment trust or the constitutional documents of the SPPICAV may authorise the redemption of units or shares in the real-estate investment trust with streamlined operating rules only after a certain period has elapsed, which shall not exceed three years after the constitution of the scheme.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

*Amended by Order No. 2008-1081 of 23 October 2008 Art. 4 Official Journal of 24 October 2008*

## Subsection 5 Real-estate collective investment schemes with subfunds

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

Article L. 214-146. - I. - A real-estate collective investment scheme may have two or more subfunds if provided for in the regulations of the real-estate investment trust or in the constitutional documents of the SPPICAV. Each subfund gives rise to the issue of one or more categories of shares or units which represent the assets of the real-estate investment trust that are allocated to it. As an exception to Article 2093 of the Civil Code and unless otherwise stipulated in the OPCI's constitutional documents, the assets of a given subfund may only be used to meet that subfund's debts, commitments and obligations and only benefit from that subfund's receivables.

Where subfunds are created in a real-estate collective investment scheme, they are all individually subject to the provisions of this Code that govern that scheme.

The Autorité des Marchés Financiers shall determine the conditions under which the creation of a subfund is subject to its authorisation, as well as the conditions for determining the cash-in value of each category of shares or units on the basis of the net value of the assets allocated to the corresponding subfund.

II. - Separate accounts are maintained in the OPCI's books.

III. - The Autorité des Marchés Financiers shall approve any transformation, merger, demerger or liquidation of a subfund, under conditions which it determines.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 2 Official Journal of 14 October 2005*

## Section 6 Closed-ended investment companies (Sociétés d'investissement à capital fixe)

*Inserted by Order No. 2009-107 of 30 January 2009 Art. 1 Official Journal of 31 January 2009*

### Subsection 1 General provisions

*Inserted by Order No. 2009-107 of 30 January 2009 Art. 1 Official Journal of 31 January 2009*

Article L. 214-147. - A closed-ended investment company (*société d'investissement à capital fixe*, SICAF) is a public limited company whose purpose is the management of a portfolio of financial instruments, deposits and cash, by diversifying investment risks either directly or indirectly, with an eye to passing on the results of this management to its shareholders. Except in cases stipulated in the constitutional documents, shares may not be redeemed by the closed-ended investment company at the request of its shareholders. It may lend and borrow securities and borrow cash. To carry out its management objective, the company may grant guarantees referred to in Article L. 211-38, or benefit from them, under the conditions set forth in this same article, as well as benefit from guarantees for joint and several liability and on-demand guarantees. It may enter into financial contracts referred to in Article L. 211-1 under conditions established by a decree issued following consultation with the Conseil d'Etat.

On all official documents and information provided to third parties, the company must include its official name and its status as a closed-ended investment company.

The initial capital of a SICAF cannot be below an amount established by decree.

The shares of a SICAF may be admitted to trading on a regulated financial instruments market referred to in Article L. 421-1, or a multilateral trading facility referred to in Article L. 424-1, under the conditions set forth in subsection 2. The SICAF's net assets per share is then calculated and communicated

under conditions determined in a decree issued following consultation with the Conseil d'Etat.

*Inserted by Order No. 2009-107 of 30 January 2009 Art. 1 Official Journal of 31 January 2009*

Article L. 214-148. - The Board of Directors or the Executive Board of the SICAF shall determine its investment strategy under conditions defined by decree. The strategy and its distribution policy shall be presented in the SICAF's constitutional documents, and reproduced in the annual report referred to in Article L. 225-100 of the Commercial Code. The investment strategy must be followed at all times. The strategy may stipulate that the SICAF's assets will be invested in whole or in part in shares or units of another collective investment scheme or foreign investment trust governed by this section, and in rights pertaining to an investment in an entity that does not have a legal personality, issued on the basis of foreign law, provided that the investment is compatible with the risk-distribution objective referred to in Article L. 214-147 of this Code.

The documents intended to inform the public must clearly mention that, save for cases stipulated in the constitutional documents, shares may not be redeemed by the SICAF at the request of its shareholders.

*Inserted by Order No. 2009-107 of 30 January 2009 Art. 1 Official Journal of 31 January 2009*

Article L. 214-149. A SICAF's management is carried out by a portfolio management company governed by Article L. 532-9.

*Inserted by Order No. 2009-107 of 30 January 2009 Art. 1 Official Journal of 31 January 2009*

Article L. 214-150. - A SICAF's assets shall be held by a single investment service provider, distinct from the SICAF and the management company, and selected by the SICAF from a list of approved legal entities that provide custodial services for financial instruments for third parties. The said provider is appointed by the SICAF's constitutional documents. It ensures the legal and regulatory compliance of the decisions of the SICAF and the management company under the conditions stipulated by decree. For the purposes of subparagraph 12° of paragraph II of Article L. 621-9, it is considered to be a collective investment scheme depositary. It is also considered as the depositary referred to in Articles L. 225-5 to L. 225-7 and Articles L. 225-13 and L. 225-15 of the Commercial Code.

The SICAF, the service provider referred to in the first paragraph and the management company must act independently of each other and for the exclusive benefit of the shareholders. They must provide adequate guarantees in respect of their organisation, their technical and financial resources, and the respectability and experience of their managers. They must take the necessary steps to ensure the security of the transactions.

The liability of the service provider referred to in the first paragraph is not affected by the fact of it entrusting some or all of the assets in its custody to a third party. Nevertheless, under conditions defined in the SICAF's constitutional documents, an agreement signed between the service provider and the SICAF may set forth obligations for which the service provider is liable under the terms of the service referred to in paragraph 1 of Article L. 321-2. A decree shall determine the implementing conditions of this paragraph.

Creditors whose claim arises from the custody or management of the assets of a SICAF may claim against those assets only.

Creditors of the service provider referred to in the first paragraph may not sue for payment of their debts against the assets of a SICAF held by it.

*Inserted by Order No. 2009-107 of 30 January 2009 Art. 1 Official Journal of 31 January 2009*

*Amended by Act No. 2009-1255 of 19 October 2010 Art. 15 Official Journal of 20 October 2010*

Article L. 214-151. - A SICAF may not make a public offer unless the total par value of the shares issued is greater than an amount established by decree.

*Inserted by Order No. 2009-107 of 30 January 2009 Art. 1 Official Journal of 31 January 2009*

Article L. 214-152. - As an exception to Articles L. 225-127 to L. 225-149-3 of the Commercial Code, the chairman of the Board of Directors or the Executive Board of the SICAF may, at any moment, carry out a capital increase under the conditions determined by the company's constitutional documents.

A SICAF may not issue shares at a price lower than the net asset value per share without offering them first to the existing shareholders.

*Inserted by Order No. 2009-107 of 30 January 2009 Art. 1 Official Journal of 31 January 2009*

Article L. 214-153. - Where their total par value is less than the threshold referred to in Article L. 214-151, the units or shares issued by the SICAF or a closed-ended investment company under foreign law may not be directly marketed except among qualified investors referred to in paragraph II of Article L. 411-2.

Nevertheless, if a non-resident of France subscribes or purchases shares in a SICAF that are being marketed in other countries, the investors for whom subscription and purchase of these SICAFs is reserved shall be governed by the law of the country in which the marketing takes place.

*Inserted by Order No. 2009-107 of 30 January 2009 Art. 1 Official Journal of 31 January 2009*

Article L. 214-154. - As an exception to the provisions of Parts II and III of Book II and Part II of Book VIII of the Commercial Code:

- 1° The shares are fully paid-up upon issue;
- 2° Any contribution in kind is valued by the auditor under his own responsibility;
- 3° An ordinary General Meeting may be held without a quorum being required; the same applies to a reconvened extraordinary General Meeting;
- 4° An individual may simultaneously hold five appointments as general manager, Executive Board member or sole general manager of a SICAF. Remits as general manager, Executive Board member or sole general manager of a SICAF are not taken into account for the calculation of plurality of offices referred to in Book II of the Commercial Code;
- 5° Appointments as a legal entity's permanent representative on a SICAF's Board of Directors or Supervisory Board are not taken into account for the purposes of Articles L. 225-21, L. 225-77 and L. 225-94-1 of the Commercial Code
- 6° The auditor is appointed for six accounting periods by the Board of Directors or the Executive Board with the consent of the Autorité des Marchés Financiers. The appointment of an alternate auditor is not required. The auditor is released from professional secrecy in relation to the Autorité des Marchés Financiers.

The auditor is required to report to the Autorité des Marchés Financiers, as soon as possible, any fact or decision concerning an closed-ended investment company which he has become aware of in the performance of his duties and which might:

a) Constitute a breach of the laws or regulations applicable to that company and be likely to have significant effects on its financial situation, profits or assets

b) Jeopardise its continued exploitation

c) Give rise to the issuing of reservations or a refusal to certify the accounts

The auditor shall not incur liability through having provided information or disclosed facts pursuant to the obligations imposed by this article.

The Autorité des Marchés Financiers may also send the SICAF's auditors information they require in order to perform their duties. The information thus provided is covered by the rules of professional secrecy.

*Inserted by Order No. 2009-107 of 30 January 2009 Art. 1 Official Journal of 31 January 2009*

Article L. 214-155. - Articles L. 224-1, L. 224-2, the second paragraph of Article L. 225-68, the second paragraph of Article L. 225-131, Articles L. 225-258 to L. 225-270, L. 232-2, and L. 232-10, of the Commercial Code are not applicable to SICAFs.

*Inserted by Order No. 2009-107 of 30 January 2009 Art. 1 Official Journal of 31 January 2009*

*Amended by Act No. 2009-1255 of 19 October 2010 Art. 15 Official Journal of 20 October 2010*

Article L. 214-156. - The constitutional documents of a SICAF shall determine the accounting periods, which shall not exceed 12 months. The first accounting period may nevertheless be of a different duration, but shall not exceed eighteen months.

Within six weeks of the end of each half-year of the accounting period, the SICAF shall draw up an inventory of the assets managed by the service provider referred to in Article L. 214-150.

Within eight weeks of the close of each half-year of the accounting period, the SICAF shall publish details of the asset structure and the net asset value per share. The auditor certifies the accuracy thereof before publication. The SICAF shall publish, under the same conditions, a description of the exposure to the various financial risks. Upon expiry of this period, any shareholder who so requests is entitled to see the document.

*Inserted by Order No. 2009-107 of 30 January 2009 Art. 1 Official Journal of 31 January 2009*

*Amended by Act No. 2009-1255 of 19 October 2010 Art. 15 Official Journal of 20 October 2010*

### Subsection 2 Closed-ended investment companies whose shares are traded on a regulated market

*Inserted by Order No. 2009-107 of 30 January 2009 Art. 1 Official Journal of 31 January 2009*

Article L. 214-157. - The provisions of this subsection apply to SICAFs whose shares are admitted to trading on a regulated market referred to in Article L. 421-1, or a multilateral trading facility referred to in Article L. 424-1.

*Inserted by Order No. 2009-107 of 30 January 2009 Art. 1 Official Journal of 31 January 2009*

Article L. 214-158. - Articles L. 225-209 and L. 225-209-1, the first paragraph of Article L. 225-10 and Articles L. 225-211 and L. 225-212 of the Commercial Code are not applicable to SICAFs governed by this subsection.

A SICAF governed by this subsection is authorised to redeem its shares, without prior authorisation from the general meeting, up to a limit of 10% of its capital per year. This limit may be extended to 25% where the price of the shares is more than 10% lower than the net asset per share. When calculating these limits,

the number of shares taken into account corresponds to the number of shares purchased, minus the number of shares sold during the year. The extraordinary General Meeting of the SICAF may authorise the redemption of shares over and above this 25% limit.

A SICAF governed by this subsection may not own, either directly or indirectly, or via the intermediary of a person acting in his own name but on behalf of the SICAF, more than 10% of the total of its own shares.

SICAFs governed by this subsection shall report, on a monthly basis to the Autorité des Marchés Financiers, with regard to acquisitions, disposals, cancellations and transfers that they have carried out. They shall publish this same information on a quarterly basis.

The SICAF's Board of Directors or the Executive Board, as the case may be, must indicate, in the report stipulated in Article L. 225-100 of the Commercial Code, the number of shares purchased and sold during the financial year, the average purchase and sale prices, total transaction fees, the number of shares held at the end of the financial year and their estimated value at the purchase price, as well as their par value for each of its aims, the number of shares used, as well as any reallocations it was subject to and the portion of the capital that they represent.

*Inserted by Order No. 2009-107 of 30 January 2009 Art. 1 Official Journal of 31 January 2009*

### Subsection 3 Foreign Closed-Ended Funds Whose Units or Shares are Traded on a Regulated Market

*Inserted by Order No. 2009-107 of 30 January 2009 Art. 1 Official Journal of 31 January 2009*

Article L. 214-159. - Where units or shares in a closed-ended investment fund set up under foreign law are admitted to trading on a regulated market referred to in Article L. 421-1 or a multilateral trading facility referred to in Article L. 424-1, the market undertaking or the multilateral trading facility manager shall verify that the fund is subject to the rules that will ensure security of transactions and guarantee that the interest of investors as well as the rules governing the redemption and holding of its own units or shares are at least equivalent to those set out under this section.

## PART II SAVINGS PRODUCTS

### Chapter I General savings products with a specific tax scheme

#### Section 1 The *Livret A*

*Heading amended by Act No. 2008-776 of 4 August 2008 Art. 145 Official Journal of 5 August 2008*

Article L. 221-1. - The *Livret A* may be marketed by any credit institution authorised to receive sight deposits from the public, and that has signed an agreement with the State to this effect.

*Inserted by Act No. 2008-776 of 4 August 2008 Art. 145 Official Journal of 5 August 2008*

**Article L. 221-2.** - The credit institution referred to in Article L. 518-25-1 shall open a *Livret A* account for any person referred to in Article L. 221-3 who so requests.

*Inserted by Act No. 2008-776 of 4 August 2008 Art. 145 Official Journal of 5 August 2008*

**Article L. 221-3.** - The *Livret A* is open to individuals, to the associations referred to in paragraph 5 of Article 206 of the Code Général des Impôts, to low-income housing associations and to co-owner associations.

Minors are allowed to open a *Livret A* without involving their legal representative. They may also withdraw the sums indicated in the savings accounts thus opened without this involvement, but only after the age of sixteen and if their legal representative does not object thereto.

An individual may only hold one *Livret A* or one special account with the Crédit Mutuel opened before 1 January 2009.

For the purposes of this section, co-owner associations are subject to the same provisions as the associations referred to in paragraph 5 of Article 206 of the Code Général des Impôts.

*Inserted by Act No. 2008-776 of 4 August 2008 Art. 145 Official Journal of 5 August 2008*

*Amended by Order No. 2010-737 of 1 July 2010 Art. 60 Official Journal of 2 July 2010*

**Article L. 221-4.** - A decree issued following consultation with the Conseil d'Etat specifies the terms for opening, operating and closing a *Livret A*.

Deposits into a *Livret A* may not bring the amount in the account above a ceiling established by decree stipulated in the first paragraph.

The same decree sets forth the minimal amounts for individual withdrawal and deposit transactions for the institutions that market the *Livret A* and for the credit institution referred to in Article L. 518-25-1.

*Inserted by Act No. 2008-776 of 4 August 2008 Art. 145 Official Journal of 5 August 2008*

**Article L. 221-5.** - A share of the total deposits in *Livret A* and *Livret de Développement Durable* savings accounts governed by Article L. 221-27 by the institutions marketing one or the other account shall be centralised by the Caisse des Dépôts et Consignations in the fund stipulated in Article L. 221-7.

The centralisation rate of the collected deposits from the *Livret A* and *Livret de Développement Durable* savings accounts shall be established such that the resources centralised from these accounts into the fund stipulated in Article L. 221-7 shall be at least equal to the amount of loans granted for social housing and for urban policy by the Caisse des Dépôts et Consignations from the same fund, multiplied by a coefficient of 1.25.

A decree issued following consultation with the Conseil d'Etat and after approval by the Supervisory Board of the Caisse des Dépôts et Consignations shall establish the implementing conditions for the first two paragraphs.

The resources collected by the institutions marketing the *Livret A* or the *Livret de Développement Durable* savings account that are uncentralised in application of the preceding paragraphs shall be used by these institutions to finance small and medium-sized enterprises, particularly their creation and development, as well as to finance energy-saving works in older properties. **In addition, each year, when the total amount of the sums deposited in the *Livret A* and *Livret de Développement Durable* savings accounts that are not centralised by the Caisse des Dépôts et**

**Consignations increases, the credit institution concerned must devote at least three-fourths of the increase observed to the granting of new loans to small and medium-sized enterprises.**

Institutions marketing the *Livret A* or the *Livret de Développement Durable* savings accounts shall publish an annual report presenting the use of the non-centralised resources collected in connection with these two accounts.

So that their compliance with the obligations referred to in the fourth paragraph may be verified, the institutions marketing the *Livret A* or the *Livret de Développement Durable* savings account that have not chosen, under the conditions stipulated in a decree issued following consultation with the Conseil d'Etat, the centralisation of the full amount of the resources that they collect, shall, on a quarterly basis, send a written report to the Minister for the Economy on the financial support provided using non-centralised resources. Deposits whose use, during the most recent quarter, does not meet the **forementioned conditions of use** shall be centralised in the fund stipulated in Article L. 221-7 for a three-month period. The Minister for the Economy shall ensure that this centralisation is effective, but it shall not result in the compensation referred to in the first paragraph of Article L. 221-6.

The form and content of the information referred to in the two preceding paragraphs shall be established by order of the Minister for the Economy.

*Inserted by Act No. 2008-776 of 4 August 2008 Art. 145 Official Journal of 5 August 2008*

*Amended by Act No. 2009-1255 of 19 October 2010 Art. 4 Official Journal of 20 October 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 66 Official Journal of 23 October 2010*

**Article L. 221-6.** - Institutions marketing the *Livret A* and those marketing the *Livret de Développement Durable* shall receive compensation in return for the centralisation of funds. A decree issued following consultation with the Conseil d'Etat and with the approval of the Supervisory Board of the Caisse des Dépôts et Consignations shall specify the method for calculating this compensation.

The credit institution referred to in Article L. 518-25-1 shall receive additional compensation for the distribution and operation of the *Livret A*. A decree issued following consultation with the Conseil d'Etat shall specify the method for calculating this additional compensation.

The compensation and additional compensation referred to in the two preceding paragraphs shall be paid by the fund stipulated in Article L. 221-7.

*Inserted by Act No. 2008-776 of 4 August 2008 Art. 145 Official Journal of 5 August 2008*

**Article L. 221-7. - I.** - The sums referred to in Article L. 221-5 shall be centralised by the Caisse des Dépôts et Consignations in a fund managed by it and referred to as the savings fund.

**II.** - The Caisse des Dépôts et Consignations, following approval by its Supervisory Board, and following authorisation by the Minister for the Economy, may issue debt securities for the benefit of the fund.

**III.** - The sums centralised pursuant to of Article L. 221-5, as well as, if any, income from the debt securities referred to in paragraph II of this article shall be preferentially employed for financing social housing. A portion of the sums may be used to purchase and manage financial instruments as defined in Article L. 211-1.

**IV.** - The uses of the savings fund shall be established by the Ministry for the Economy. The Supervisory Board of the Caisse



des Dépôts et Consignations shall send to Parliament a list of the resources and the uses of the savings fund referred to in this article for the previous year.

V. - The government guarantee, which is extended to the sums deposited by savers into the *livrets*, and whose deposits are centralised, in whole or in part, in the savings fund, as well as the guarantee extended to the savings fund receivables held by the institutions marketing these savings accounts, are both governed by Article 120 of the 2008 Supplementary Budget Act No. 2008-1443 of 30 December 2008.

*Inserted by Act No. 2008-776 of 4 August 2008 Art. 145 Official Journal of 5 August 2008*

*Amended by 2008 Supplementary Budget Act No. 2008-1443 of 30 December 2008 Official Journal of 31 December 2008*

Article L. 221-8. - Transactions pertaining to the *Livret A* as well as to special Crédit Mutuel savings accounts opened before 1 January 2009 are subject to documentary and on-site audits by the General Inspectorate of Finance.

*Inserted by Act No. 2008-776 of 4 August 2008 Art. 145 Official Journal of 5 August 2008*

Article L. 221-9. - A regulated savings monitoring unit (Observatoire de l'Épargne Réglementée) has been established, in charge of monitoring the implementation of the right to market the *Livret A* now extended to all banks, and in particular the impact of this measure on household savings, the financing of social housing and the development of access to banking services.

The credit institutions shall supply the monitoring unit with the information required for it to perform its duties.

A decree issued following consultation with the Conseil d'Etat shall stipulate the organisational structure and the operation of this monitoring unit, as well as the list of documents and their frequency that the institutions marketing the *Livret A* shall supply to it. The monitoring unit shall submit an annual report to Parliament and to the Government concerning the implementation of the generalised marketing of the *Livret A*.

*Inserted by Act No. 2008-776 of 4 August 2008 Art. 145 Official Journal of 5 August 2008*

## Section 2 Popular savings products

### Subsection 1 The *Livret d'Épargne Populaire* savings account

Article L. 221-13. - The *Livret d'Épargne Populaire* savings account (*compte sur livret d'épargne populaire*) is intended to assist the people with the lowest incomes to invest their savings under conditions that maintain their purchasing power.

Article L. 221-14. - A decree issued following consultation with the Conseil d'Etat shall specify the operational particulars of such savings accounts, including the conditions under which the deposit-taking institutions are authorised to open *Livret d'Épargne Populaire* savings accounts for the beneficiaries thereof.

*Amended by Order No. 2000-1223 of 14 December 2000, rectifying*

Article L. 221-15. - The benefit of such savings accounts shall be reserved for taxpayers who are domiciled in France for tax purposes and who can show, each year, that the tax payable by them on their total income, before application of the tax credits

and the standard deductions at source without full discharge, does not exceed a ceiling which is revised each year in the same proportion as the first band of the income tax scale, with the result thus obtained being rounded upwards to the nearest euro.

The tax referred to in the first paragraph is that which is due for collection in the year preceding that in respect of which substantiation is requested.

However, the tax due and payable in the year in which an application to open an account is made shall be retained for the benefit of persons whose family situation or income changed during the previous year. The means through which such taxpayers may prove that they meet the tax ceiling condition are indicated in the decree referred to in Article L.221-14.

*Amended by 2004 Supplementary Budget Act No. 2004-1485 of 30 December 2004 Art. 38 V*

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 36 Official Journal of 7 May 2005*

Article L. 221-16. - Only one *Livret d'Épargne Populaire* savings account may be opened by each taxpayer, and one for the taxpayer's spouse.

Article L. 221-17. The prohibitions specified in Article L. 112-2 do not apply to the interest paid on popular savings deposits that meet the stability conditions established at six calendar months.

*Article L. 221-17-1. - Repealed by 2008 Supplementary Budget Act No. 2008-1443 of 30 December 2008 Official Journal of 31 December 2008*

Article L. 221-17-2. Transactions pertaining to *Livret d'Épargne Populaire* savings accounts are subject to documentary and on-site audits by the General Inspectorate of Finance.

*Inserted by Order No. 2005-429 amending the Monetary and Financial Code Art. 38 Official Journal of 7 May 2005*

### Subsection 2 The *Plan d'Épargne Populaire* savings plan

Article L. 221-18. - Subject to payments being made into an account opened, or a life insurance policy taken out with a company governed by the Insurance Code or the Mutuality Code, a credit institution, the Banque de France, a public accountant, an investment service provider or a provident institution governed by Article L. 731-1 of the Social Security Code or Article 1050 of the Rural Code, a *Plan d'Épargne Populaire* savings plan (*Plan d'Épargne Populaire*) gives entitlement to repayment of the sums paid in and their capitalised income or to payment of a life annuity.

A plan may be opened by each taxpayer or by each spouse subject to joint taxation.

The amount of the payments is subject to a ceiling determined by the regulations.

With effect from 25 September 2003, no further *Plans d'Épargne Populaire* may be opened.

NB (1): Article L. 731-1 of the Social Security Code has been repealed by Article 16 of Act No. 94-678 of 8 August 1994. Article 1050 of the former Rural Code has been repealed by Article 6 I of Order No. 2000-550 of 15 June 2000.

*Amended by the 2004 Budget Act No. 2003-1311 of 30 December 2003 Art. 82 III Official Journal of 31 December 2003*

*Amended by Act No. 2005-516 of 20 May 2005 relating to the regulation of postal activities Art. 16 IV<sup>3°</sup> Official Journal of 21 May 2005*

*Amended by Order No. 2010-420 of 27 April 2010 Art. 112 Official Journal of 30 April 2010.*

Article L. 221-19. - Payments made by a plan holder who is domiciled in France for tax purposes and whose income tax contributions for the year before last do not exceed the limit referred to in paragraph 1 bis of Article 1657 of the Code Général des Impôts give entitlement, for the first seven years, or for the first ten years when a regular-premium life insurance policy was taken out in conjunction with a *Plan d'Épargne Populaire* before 5 September 1996, to a bonus payment equal to one quarter of the annual amount thereof, subject to an annual ceiling established by decree.

Payments made from 1 January 1998 onwards give entitlement to that same bonus payment, provided that the plan holder's income for the year before last did not exceed the limits set in I of Article 1417 of the Code Général des Impôts.

The sum of the bonus payments and capitalised interest is paid by the State when seven calendar years have elapsed since the inception of the plan or when ten calendar years have elapsed since the inception of the plan when a regular-premium life insurance policy was taken out in conjunction with a *Plan d'Épargne Populaire* before 5 September 1996.

However, a *Plan d'Épargne Populaire* holder who took out a regular-premium life insurance policy in conjunction with his plan before 5 September 1996 may benefit from the bonus payment and capitalised interest thereon when seven calendar years have elapsed since the inception of the plan, provided that he submits a request to that effect in writing to the institution managing the plan, on unstamped paper, before 1 July of the eighth year following inception of the plan. In this case, contrary to the first paragraph of this article, payments made into the plan with effect from 1 January of the eighth year following inception of the plan do not give entitlement to a bonus payment.

Article L. 221-20. - Any withdrawal of funds entails closure of the plan. The plan is closed upon the death of the holder.

Beyond the tenth year, withdrawals do not entail closure of the plan. No payment may be made after the first withdrawal, however.

Article L. 221-21. - Any institution managing a *Plan d'Épargne Populaire* which is unable to produce the contractually required supporting documents within three months of a request being made by the relevant department or auditing body must repay to the State the bonus payments in respect of which supporting documents have not been produced, together with the capitalised interest thereon.

These provisions apply to agreements entered into between those institutions and the Government before 1 January 1997 in respect of sums paid with effect from 1 January 1997.

Article L. 221-22. - Under certain conditions, *Plans d'Épargne Populaire* give entitlement to tax benefits and, for plans opened before 22 September 1993, a savings bonus.

The administration of *Plans d'Épargne Populaire* is subject to documentary and on-site audits by the General Inspectorate of Finance.

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 39 Official Journal of 7 May 2005*

Article L. A decree issued following consultation with the Conseil d'Etat shall specify the eligible transactions under the Mutuality Code, Part III of Book VII of the Social Security Code, or Article 1050 of the Rural Code, and also the implementing regulations for this subsection, including the reporting obligations of taxpayers and intermediaries.

NB: Article 1050 of the former Rural Code has been repealed by Article 6 I of Order No. 2000-550 of 15 June 2000. Part III of Book VII of the Social Security Code has been repealed by Article 16 of Act No. 94-678 of 8 August 1994 (see Book IX and, in particular, Articles L. 911-1 et seq. of the Social Security Code).

### Section 3 The *Livret Jeune* savings account

Article L. 221-24. - The right to open a *Livret Jeune* savings account (*Livret Jeune*) and make deposits and withdrawals thereon is restricted to individuals aged between twelve and twenty-five years who are habitually resident in France.

Where those persons are aged under sixteen years, consent of their legal representative is required only for withdrawals. When they are aged between sixteen and eighteen years, they may effect such movements themselves unless their legal representative raises an objection.

Article L. 221-25. - An individual may hold only one *Livret Jeune*.

Article L. 221-26. - A decree issued following consultation with the Conseil d'Etat shall determine the operational terms of the *Livret Jeune* savings account, including the conditions under which it is opened, the interest it bears, and its closure, particularly when the holder reaches the age of twenty-five, as well as its supervision.

The decree shall also determine the circumstances in which breaches of the rules set forth in this section may, based on a ruling from the Minister for the Economy and after the party concerned has been invited to comment thereon, result in loss of interest on all the sums deposited, but that deduction shall not affect interest accrued more than three years prior to discovery of the breach.

Article L. 221-26-1. - Transactions pertaining to the *Livret Jeune* savings account are subject to documentary and on-site audits by the General Inspectorate of Finance, and collecting institutions and bodies are, based on this activity, subject to the same inspections.

*Inserted by Act. No. 2006-387 of 31 March 2006 Art. 26 Official Journal of 1 April 2006*

### Section 4 *Livret de Développement Durable* savings accounts

*Heading amended by Act No. 2006-1771 of 30 December 2006 Art. 30 Official Journal of 31 December 2006*

Article L. 221-27. - The *Livret de Développement Durable* savings account (*Livret de Développement Durable*) may be opened by individuals who are domiciled in France for tax purposes in institutions and bodies authorised to accept deposits. The sums deposited into this account shall be used in compliance with Article L. 221-5.

Deposits into a *Livret de Développement Durable* savings account are subject to a ceiling determined by regulations.

Only one account may be opened by a taxpayer or by each spouse or civil-union partner filing jointly.

The terms for opening and operating a *Livret de Développement Durable* savings account are established by regulations, as are the nature of the energy-saving works to which amounts deposited into this account are allocated.

Transactions pertaining to *Livret de Développement Durable* savings accounts are subject to documentary and on-site audits by the General Inspectorate of Finance.

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 40 Official Journal of 7 May 2005*

*Replaced by Act No. 2006-1771 of 30 December 2006 Art. 30 Official Journal of 31 December 2006*

*Amended by Act No. 2008-776 of 4 August 2008 Art. 145 Official Journal of 5 August 2008*

*Article L. 221-28. Repealed by Act No. 2008-776 of 4 August 2008 Art. 145 Official Journal of 5 August 2008*

## Section 5 Home-ownership savings accounts

Article L. 221-29. The rules relating to home-ownership savings accounts are established by Articles L. 315-1 to L. 315-3 of the Building and Housing Code, reproduced hereunder:

*Art. L. 315-1. - The purpose of home-ownership savings plans is to enable loans to be granted to individuals who have made deposits into a home-ownership savings account and who use their savings to finance a dwelling to be used as their main residence.*

*The holders of a home-ownership savings account who do not use their savings to finance a dwelling to be used as their main residence under the terms of the first paragraph may use them to finance dwellings having another use as provided for in a decree issued following consultation with the Conseil d'Etat which determines the authorised uses. Those uses exclude any commercial or professional use, with the exception of tourist accommodation.*

*The foregoing provisions do not prevent a home-ownership savings plan from being used to finance premises intended for commercial or professional use if they also include the holder's main residence."*

*Act No. 2003-721 of 1 August 2003 Art. 31 V Official Journal of 5 August 2003*

*Article L. 315-2. - Home-purchase loans pertaining to main residences are granted to finance the construction, purchase and extension costs, or the costs of certain repairs and improvements.*

*Home-purchase loans pertaining to dwellings having a different use are granted to finance the construction and extension costs, or the costs of certain repairs and improvements.*

*Home-purchase loans granted between 1 January 1996 and 31 December 1996 may be used to finance the purchase costs of dwellings referred to in the previous paragraph."*

*Act No. 2003-721 of 1 August 2003 Art. 31 V Official Journal of 5 August 2003*

*Article L. 315-3. - Home-purchase savings deposits are taken by the Caisse nationale d'épargne and the ordinary savings banks, and also by banks and credit institutions which enter into an agreement with the Government through which they undertake to apply the rules applicable to home-ownership savings plans."*

*(Act No. 2005-516 of 20 May 2005 Art. 16 Official Journal of 21 May 2005)*

## Section 6 Personal equity plan (Plan d'épargne en actions)

*(Subsection created by Order No. 2005-429 amending the Monetary and Financial Code Art. 41 Official Journal of 7 May 2005)*

Article L. 221-30. - Taxpayers domiciled in France for tax purposes may open a personal equity plan (*plan d'épargne en actions*, PEA) with a credit institution, the Caisse des Dépôts et Consignations, the Banque de France, La Poste, an investment firm or an insurance company governed by the Insurance Code.

Only one PEA may be opened by one taxpayer or by each spouse subject to joint taxation. A PEA can have only one holder.

A PEA entails the opening of a securities account and a linked cash account, or, for plans opened with an insurance company, the signing of a capitalisation contract.

The plan holder makes cash payments up to a limit of 132,000 euros.

*Inserted by Order No. 2005-429 amending the Monetary and Financial Code Art. 41 Official Journal of 7 May 2005*

Article L. 221-31. - I. - 1° Sums paid into a PEA are used in one or more of the following ways:

a) Shares or investment certificates of companies and cooperative investment certificates

b) Shares of limited liability companies or companies having equivalent status, and equity securities of companies governed by Act No. 47-1775 of 10 September 1947 enshrining a statute of cooperation

c) Subscription or allotment rights or warrants attached to the shares referred to in points a) and b) above

2 Sums paid into a PEA may also be used to subscribe to:

a) Units of open-ended investment companies which place more than 75% of their assets in securities and rights referred to in points a), b) and c) of paragraph 1

b) Units of common funds which place more than 75% of their assets in securities and rights referred to in paragraph 1 a), b) and c)

c) Units or shares in collective investment undertakings established in other European Community Member States or in a State which is not a member of that Community but is a party to the European Economic Area Agreement and has entered into a tax treaty with France which contains an administrative assistance clause to combat tax fraud and avoidance and thus benefits from the mutual recognition of approvals procedure specified by Council Directive 85/611/EC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), and which place more than 75% of their assets in securities and rights referred to in points a), b) and c) of paragraph 1

3° Sums paid into a PEA may also be used in an accumulation unit capitalisation contract governed by the Insurance Code and invested in one or more categories of securities referred to above, without prejudice to the provisions of Article L. 131-1 of that same code

4° The issuers of the securities referred to in paragraph 1 must have their registered office in France or another European Community Member State or a State which is not a member of that Community but is a party to the European Economic Area

Agreement and has entered into a tax treaty with France which contains an administrative assistance clause to combat tax fraud and avoidance, and must be subject to corporation tax or an equivalent tax under ordinary law. For the purposes of Articles L. 221-30 to L. 221-32, the condition relating to the normal taxation rate does not apply to the new companies referred to in Article 44 sexes of the Code Général des Impôts or the companies referred to in paragraphs 1 ter and 3 septies of Article 208 and in Article 208 C of that same code, or companies with similar characteristics or that are subject to equivalent regulations, or those companies referred to in Article 208 C of the same code whose registered offices are located in a Member State of the European Community or a State party to the European Economic Area agreement that have entered into a tax treaty with France which contains an administrative assistance clause to combat tax fraud and avoidance, which are subject to corporation tax under ordinary law.

II. - 1° The units of the funds referred to in subparagraph 3 of paragraph III of Article 150-0 A of the Code Général des Impôts cannot be invested in the personal equity plan.

Sums paid into a personal equity plan cannot be used to buy securities offered in the manner indicated in Article 80 bis of the Code Général des Impôts.

2 Securities or shares whose subscription entitles the plan holder to the tax benefits resulting from the provisions of 2 quater and 2 quinquies of Article 83, Articles 83 ter, 199 unicies, 199 undecies A and 199 terdecies A, of I bis of Article 163 bis C of the Code Général des Impôts, as well as the second paragraph of II of Article 726 of that same code cannot be placed in the plan;

3° The plan holder, his spouse and their ascendants and descendants must not collectively hold, or have held, directly or indirectly, more than 25% of the rights over the profits of companies whose securities are included in the plan either during the term of the plan or at any time during the five years preceding acquisition of those securities through the plan.

III. - The sums or securities deriving from the investments made in a PEA are reinvested in the plan in the same way as the instalments.

*Inserted by Order No. 2005-429 amending the Monetary and Financial Code Art. 41 Official Journal of 7 May 2005*

*Amended by Article 1 of Decree No. 2003-933 of 30 September 2003 (Article 199 undecies expired)*

*Amended by Act No. 2006-1771 of 30 December 2006 Art. 102 XI Official Journal of 31 December 2006*

*Amended by 2010 Budget Act No. 2009-1673 of 30 December 2009 Art. 104 Official Journal of 31 December 2009*

Article L. 221-32. - I. - Beyond the eighth year, partial withdrawals of sums or securities and, in the case of capitalisation contracts, partial redemptions, do not give rise to closure of the PEA. No further investment is possible after the first withdrawal or the first redemption, however.

II. - Any withdrawal of sums or securities from the plan, or any redemption, before the eighth year has elapsed shall entail closure of the plan.

As an exception to this provision, withdrawals or redemptions of sums or securities from the plan may be made during the eight years following inception of the plan without giving rise to closure provided that the said sums or securities are used, during the three months following the withdrawal or redemption, to finance the creation or takeover of a business which the plan holder, his spouse or an ascendant or descendant of his personally operates or manages if the said sums or securities are applied to a cash contribution to a company's initial capital, to the purchase of an existing business or to the owner's capital account of an individual business created within three

months of the date of payment. No further investment is possible after the first withdrawal or the first redemption, however.

*Inserted by Order No. 2005-429 amending the Monetary and Financial Code Art. 41 Official Journal of 7 May 2005*

## Section 7 Co-development savings accounts

*(Section created by Act No. 2006-911 of 24 July 2006 Art. 1 Official Journal of 25 July 2006 and amended by Act No. 2007-1631 of 20 November 2007 Art. 52 Official Journal of 21 November 2007)*

### Subsection 1 The Co-development savings account (Compte épargne codéveloppement)

*(Subsection inserted by Act No. 2007-1631 of 20 November 2007 Art. 52 Official Journal of 21 November 2007)*

Article L. 221-33. - I. - A co-development savings account (*compte épargne codéveloppement*) may be opened with any credit institution and any other entity authorised to take deposits which enter into an agreement with the government by which they undertake to apply the rules applicable to co-development savings accounts.

II. - The co-development savings account is intended for foreigners whose nationality is that of one of the developing countries that appear on a list of countries established by a joint order issued by the Minister of Foreign Affairs, the Minister for the Interior, the Minister for the Economy and the Minister for the Budget, and who are holders of a residence permit allowing them to exercise a professional activity, with the goal of financing operations in their country of origin such as those set forth in paragraph III.

III. - Authorised investments made from co-development savings accounts are those which support economic development in beneficiary countries, in particular:

- a) The creation, takeover of or equity investment in local businesses
- b) Contributions to micro-finance funds
- c) The acquisition of corporate real estate, commercial real estate or rental properties
- d) The purchase of business assets
- e) Contributions to development-related investment funds or to financial firms specialised in long-term financing, operating in the countries referred to in paragraph II.

IV. - Transactions pertaining to co-development savings accounts are subject to documentary and on-site audits by the General Inspectorate of Finance.

V. - On a regular basis, a committee shall examine the consistency of projects financed via the co-development savings account with the various development financing actions, and shall present recommendations to the various ministers concerned. This committee is established by joint order of the Minister of Foreign Affairs, the Minister for the Interior, the Minister for the Economy and the Minister for the Budget.

VI. - A decree shall determine the implementing procedures for this article, in particular the obligations of the holders of a co-development savings account and those of the institutions that market it.

*Inserted by Act No. 2006-911 of 24 July 2006 Art. 1 Official Journal of 25 July 2006*



## Subsection 2 The *Livret d'Épargne pour le Codéveloppement* savings account

*Subsection inserted by Act No. 2007-1631 of 20 November 2007 Art. 52 Official Journal of 21 November 2007*

Article L. 221-34. - I. - A *Livret d'Épargne pour le Codéveloppement* may be opened with any credit institution and any other entity authorised to take deposits which enter into an agreement with the government by which they undertake to apply the rules applicable to this savings account.

II. - The *Livret d'Épargne pour le Codéveloppement* is intended for foreigners whose nationality is that of one of the developing countries that appear on a list of countries established by the decree set forth in paragraph II of Article L. 223-31, who are holders of a residency permit for at least one year, and whose tax domicile is in France, for the purposes of financing investment operations in countries who have signed an agreement with France stipulating the marketing of the *Livret d'Épargne pour le Codéveloppement*.

III. - At the end of the savings phase, during which the amounts deposited into the *Livret d'Épargne pour le Codéveloppement* are blocked for three consecutive years and added to on a regular basis under the conditions established by a decree issued following consultation with the Conseil d'Etat, holders of a *Livret d'Épargne pour le Codéveloppement* who take out a loan in order to invest in a country that has signed an agreement with France stipulating the marketing of the *Livret d'Épargne pour le Codéveloppement*, shall benefit from a capped savings premium whose amount is determined based on how much the holder has saved. Investments giving entitlement to the premium are defined in the agreements signed between the developing countries and France.

IV. - The maximum amounts that may be deposited into a *Livret d'Épargne pour le Codéveloppement*, the conditions for transferring those amounts to another credit institution are established by a decree issued following consultation with the Conseil d'Etat.

V. - Transactions pertaining to *Livrets d'Épargne pour le Codéveloppement* are subject to documentary and on-site audits by the General Inspectorate of Finance.

VI. - The committee stipulated in paragraph V of Article L. 221-33 shall, on a regular basis, examine the consistency of projects financed via the *Livret d'Épargne pour le Codéveloppement* with the various development financing actions, and shall present recommendations to the various ministers concerned.

VII. - A decree issued following consultation with the Conseil d'Etat shall determine the implementing procedures for this article.

*Inserted by Act No. 2007-1631 of 20 November 2007 Art. 52 Official Journal of 21 November 2007*

## Section 7 bis Forestry-related insurance savings account

*Inserted by Act No. 2010-874 of 27 July 2010 Art. 68 V Official Journal of 28 July 2010*

Article L. 221-34-1. - The rules relating to the forestry-related insurance savings account (*compte épargne d'assurance pour la forêt*) are established by Part VI of Book II of the Forestry Code.

*Inserted by Act No. 2010-874 of 27 July 2010 Art. 68 V Official Journal of 28 July 2010*

## Section 8 Provisions applicable to general savings products with a specific tax scheme

*Section inserted by Act No. 2007-1774 of 17 December 2007 Art. 8 Official Journal of 18 December 2007*

Article L. 221-35. - Notwithstanding any provisions to the contrary, the credit institutions or establishments listed in Article L. 518-1 may not open or keep open, under irregular conditions, accounts that benefit from public-sector aid, particularly tax exemptions, and specifically general savings products with a specific tax scheme as defined in this chapter. nor may they deposit into these accounts remuneration higher than that established by the Minister for the Economy, or accept into these accounts sums that exceed the authorised ceiling amounts.

Without prejudice to the disciplinary penalties that may be applied by the Autorité de Contrôle Prudentiel, infringement of the provisions of this article shall be punishable by a fine equal to the amount of the interest paid. This fine shall not be less than 75 euros.

A decree shall determine the implementing provisions of this article, and in particular the conditions under which infringements shall be assessed and punished.

*Inserted by Act No. 2007-1774 of 17 December 2007 Art. 8 Official Journal of 18 December 2007*

Article L. 221-36. - Violation of the provisions of Article L. 221-35 shall be assessed in stamp duties:

- By competent public accountants
- By financial administration officials

Official reports shall be drawn up at the request of the Minister for the Economy.

*Inserted by Act No. 2007-1774 of 17 December 2007 Art. 8 Official Journal of 18 December 2007*

*Amended by Order No. 2010-420 of 27 April 2010 Art. 112 Official Journal of 30 April 2010.*

Article L. 221-37. - With respect to credit institutions, violations of the provisions of Article L. 221-35 may also be assessed as stipulated in Article L. 221-36 by Banque de France inspectors specially mandated to this effect and by the governor of the Banque de France.

Article L. 221-38. - An institution that is requested to open a savings account referred to in this chapter is required, prior to doing so, to check whether the person already holds such an account. It may not open a new account if the person in question already has one. The terms of this verification process are set forth in a decree issued following consultation with the Conseil d'Etat.

*Inserted by Act No. 2008-776 of 4 August 2008 Art. 145 Official Journal of 5 August 2008*

## Chapter II Employee savings schemes

### Single Section The Employee savings plan (Plan d'épargne d'entreprise)

Article L. 222-1. - The rules pertaining to the Employee Savings Plan (*Plan d'épargne d'entreprise*, PEE) are set forth in Articles L. 3332-1 to 28 of the Labour Code.

*Amended by Order No. 2007-329 of 12 March 2007 Art. Official Journal of 13 March 2007*

## Chapter III Interest-bearing notes

Article L. 223-1. - The issue, promotion, and offering for sale or distribution by way of public offering, of promissory notes or bearer notes which contain a trader's undertaking to effect payment on a specific maturity date in return for a loan are governed by the provisions of this chapter.

The term of such notes shall not exceed five years.

Article L. 223-2. - The notes issued to the lenders shall indicate, in addition to the details of the commercial court at which the issuer is registered, his identification number in the Trade and Companies Register, his surname, forenames and address, the purpose of the business, the place where it is conducted, the trading name, and, if the issuer is a company, its legal form, its name, its capital, and the address of its registered office.

The notes also contain the issuer's most recent balance sheet, which he/it certifies as true and accurate.

Article L. 223-3. - The notes referred to in Article L. 223-1 cannot be issued by private individuals or companies which have not drawn up the balance sheet for their third year of trading.

Article L. 223-4. - The provisions of this chapter are not applicable to credit institutions or companies whose borrowings are subject to a special legal or regulatory regime or which benefit from a guarantee provided by the State, *départements*, *communes* or public institutions.

## PART III CRIMINAL PROVISIONS

### Chapter I Offences relating to financial instruments

#### SECTION I Offences relating to securities

##### Subsection 1 Bonds

Article L. 231-1. - Offences relating to bonds are envisaged and punishable as provided for in Article L. 245-9 of the Commercial Code.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 134 VIII Official Journal of 2 August 2003*

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 42 Official Journal of 7 May 2005*

##### Subsection 2 Securities issued by associations

Article L. 231-2. The fact of any executive, *de facto* or *de jure*, or by association, issuing bonds without fulfilling the conditions set forth in Articles L. 213-8 and L. 213-10 shall be punished with a fine of 9,000 euros.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

#### SECTION 2 Offences relating to collective investment

##### Subsection 1 Provisions relating to collective investment schemes, debt securitisation funds and OPCIs

*Subsection heading amended by Order No. 2005-1278 of 13 October 2005 Art. 5 Official Journal of 14 October 2005*

Article L. 231-3. - Whoever, *de jure* or *de facto*, manages an organisation which makes collective investments in transferable securities without approval, or continues to do so despite its approval being withdrawn, shall be punished by two years' imprisonment and a fine of 750,000 euros.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

Article L. 231-4. - I. - The fact of the executives of the management company of a common fund, a real-estate investment fund or a securitisation common fund failing to appoint the fund's auditor as determined in Article L. 214-29 shall incur a penalty of two years' imprisonment and a fine of 15,000 euros.

II. - The fact of any auditor, either in his own name, or in his capacity as a partner in an auditing firm, giving or confirming untruthful information concerning the financial situation of a common fund, real-estate investment fund or securitisation common fund or not revealing any criminal acts he was aware of to the Public Prosecutor, shall incur a penalty of five years' imprisonment and a fine of 18,000 euros.

III. - The fact of the executives of the management company or the depositary of a common fund, real-estate investment fund or securitisation common fund, or any person placed under their authority, obstructing the auditors' verifications or checks or refusing to provide them, in situ, with any document conducive to the performance of their duties, including all contracts, books, accounting records and minute books, shall incur a penalty of five years' imprisonment and a fine of 18,000 euros.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

*Amended by Order No. 2005-1278 of 13 October 2005 Art. 5 Official Journal of 14 October 2005*

*Amended by Order No. 2008-556 of 13 June 2008 Art. 16 Official Journal of 14 June 2008*

Article L. 231-5. - The fact of any person failing to meet the obligations stipulated in the penultimate paragraph of Article L. 214-36, the last paragraph of Article L. 214-42 and the last paragraph of Article L. 214-44, is punishable as provided for in Articles 313-1, 313-7 and 313-8 of the Criminal Code.

Article L. 231-6. Any final sentence imposed on the executives of the management company or of the depositary pursuant to Article L. 231-3, I and III of Article L. 231-4, and Articles L. 231-5 and L. 231-7, shall automatically entail the cessation of their functions and disqualification from exercising the said functions.

The court to which the action for damages envisaged in Article L. 214-28 is submitted may order the dismissal of the management company's executives or those of the depositary at the request of any unitholder.

Moreover, the depositary may ask the court to dismiss the management company's executives; it must inform the auditor thereof.

In these three cases, a temporary administrator is appointed by the court until such time as new executives are appointed, or, if such appointments seem impossible, until liquidation takes place.

Article L. 231-7. - The fact of the promoters of a securitisation common fund investing that fund's units without the approval of the fund's management company or without approval from the Autorité des Marchés Financiers shall incur a penalty of two years' imprisonment and a fine of 750,000 euros.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 V 1°*

*Amended by Order No. 2008-556 of 13 June 2008 Art. 16 Official Journal of 14 June 2008*

Article L. 231-7-1. - The fact of an executive, *de jure* or *de facto*, of a real-estate collective investment scheme investing that scheme's units or shares without approval, or if he continues his activity in spite of approval having been withdrawn, shall incur a penalty of two years' imprisonment and a fine of 750,000 euros.

*Inserted by Order No. 2005-1278 of 13 October 2005 Art. 5 Official Journal of 14 October 2005*

## Subsection 2 Provisions relating to real-estate investment companies

Article L. 231-8. - The fact, on the part of a real-estate investment company's management company executives, of failing to comply with the provisions of Articles L. 214-53 to L. 214-55 and L. 214-59 to L. 214-62 shall incur a fine of 18,000 euros.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

*Amended by Article 9V 7° of Act No. 2001-602 of 9 July 2001 (repealed by Article L. 214-61 of COMOFI)*

Article L. 231-9. The fact of the executives of a real-estate investment company's management company failing to comply with the provisions of Articles L. 214-50 and L. 214-63 shall incur a penalty of five years' imprisonment and a fine of 9,000 euros.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

Article L. 231-10. - Whoever commits the following offences shall be punished by five years' imprisonment and a fine of 9,000 euros:

1. Stating that subscriptions which he knows to be fictitious are sincere and genuine or declaring that funds which have not in fact been made available to the company have actually been paid

2. Obtaining or seeking to obtain subscriptions or payments through simulation of subscriptions or payments or publication of non-existent subscriptions or payments or by means of any other false facts

3. Publishing, for the purpose of obtaining subscriptions or payments, the names of persons who are purportedly associated with the company in some way when such is not the case

4. Fraudulently attributing to a contribution in kind a valuation greater than its true value

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

Article L. 231-11. - The fact of the executives of a real-estate investment company's management company committing the following offences shall incur a penalty of five years' imprisonment and a fine of 375,000 euros:

1. Making a distribution of fictitious dividends among the members

2. Publishing, or supplying to the members, inaccurate information so as to conceal the company's true situation

3. Using the company's property or credit in a way that they know to be contrary to its interests, for their personal ends or to benefit another company in which they have a direct or indirect interest

4. Using the powers they hold or the votes associated therewith in a manner that they know to be contrary to the company's interests, for their personal ends or to benefit another company in which they have a direct or indirect interest

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

Article L. 231-12. - The fact of the management company's executives committing the following offences shall incur a fine of 9,000 euros:

1. Failure to comply with the provisions of Article L. 214-72

2. Refusal to make the documents stipulated in the third paragraph of Article L. 214-73 available to the members

3. Failure to comply with the provisions that specify how any promotion or advertising for investment in the units of real-estate investment companies must be carried out

4. Failure to hold an ordinary general meeting within six months of the close of the accounting period or, if an extension has been granted, within the time limit set by a court decision, or failure to submit the documents indicated in the first and second paragraphs of Article L. 214-78 to the said meeting for approval

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

Article L. 231-13. - The fact of the executives of a real-estate investment company's management company failing to send any member who so requests a form of proxy pursuant to the prescriptions established by decree, as well as:

1. The text of, and explanatory memorandum for, the draft resolutions on the agenda

2. The report of the auditor(s) which is to be presented to the meeting, shall incur a fine of 3,750 euros.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

Article 231-14. - Whoever commits the following offences shall be punished by two years' imprisonment and a fine of 9,000 euros:

1. Preventing a member from participating in a meeting
2. Voting at a meeting by falsely claiming to be a member, either directly or through an intermediary
3. Procuring an agreement for, or a guarantee or promise of, advantages for voting in a certain way or for not participating in a vote, or agreeing, guaranteeing or promising such advantages

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

Article L. 231-15. - The fact of the executives of a real-estate investment company's management company committing the following offences shall incur a fine of 3,750 euros:

1. Failure to complete an attendance sheet for any meeting of the members which is signed by the members and representatives present and certified as accurate by the meeting's committee, and which contains:

- a) The surname, usual forename and domicile of each partner present and the number of units he holds
- b) The surname, usual forename and domicile of each representative and the number of units his principals hold
- c) The surname, usual forename and domicile of each partner represented and the number of units he holds.

2. Failure to append the proxies given to each representative to the attendance sheet

3. Failure to record the decisions of any meeting of members in minutes which are signed by the members of the committee and kept in a special file at the registered office which indicates the date and venue of the meeting, the means used to convene it, the agenda, the composition of the committee, the number of units represented in the voting, the documents and reports submitted to the meeting, a summary of the proceedings, the text of the resolutions put to the vote and the results of the voting

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

Article L. 231-16. - The fact of the management company's executives failing to appoint the company's auditors shall incur a penalty of two years' imprisonment and a fine of 9,000 euros.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

Article L. 231-17. - The fact of any person, either in his own name, or in his capacity as a partner in an auditing firm, accepting, performing or retaining auditing functions notwithstanding the legal disqualifications stipulated in the second paragraph of Article L. 214-79 shall incur a penalty of six months' imprisonment and a fine of 9,000 euros.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

Article L. 231-18. - The fact of an auditor, either in his own name, or in his capacity as a partner in an auditing firm, giving or confirming untruthful information concerning the real-estate investment company's financial situation or not revealing any

criminal acts he was aware of to the Public Prosecutor, shall incur a penalty of five years' imprisonment and a fine of 18,000 euros.

Articles 226-13 and 226-14 of the Criminal Code are applicable to auditors.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

Article L. 231-19. - The fact of the management company's executives or any person in the service of the company obstructing the auditors' verifications or checks or refusing to provide them, in situ, with any document conducive to the performance of their duties, shall incur a penalty of five years' imprisonment and a fine of 18,000 euros.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

Article L. 231-20. - The fact of the liquidator using the property or credit of the company in liquidation in a manner that he knows to be contrary to its interests, for his personal ends or to benefit another company in which he has a direct or indirect interest, shall incur a penalty of five years' imprisonment and a fine of 9,000 euros.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

Article L. 231-21. The fact of the management company's executives exercising their functions if the company has not obtained authorisation from the Autorité des Marchés Financiers pursuant to the provisions of Article L. 214-67, or after the withdrawal of such authorisation, shall incur a penalty of two years' imprisonment and a fine of 750,000 euros.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 V 1° and 2*

## Chapter II Offences relating to Savings Products

### Single Section Interest-bearing notes

Article L. 232-1. - The fact of the issuer reproducing an inaccurate balance sheet which is falsely certified true and fair in the cases envisaged in the second paragraph of Article L. 223-2 shall incur the penalties provided for in Articles 313-1, 313-7 and 313-8 of the Criminal Code.

Article L. 232-2. - Any violation of the provisions of Article L. 223-1, the first paragraph of Article L. 223-2, or Article L. 223-3, shall be punished by a fine of 3,750 euros. If the offender re-offends within five years, a two-year prison sentence may be imposed.

The offences referred to in this article and in Article L. 232-1 may be placed on record by the registration agents.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*



## **BOOK III Services**

### **PART I BANKING TRANSACTIONS AND PAYMENT SERVICES**

#### **Chapter I General Provisions**

##### **Section 1 Definition of banking transactions**

Article L. 311-1. - Banking transactions comprise the receipt of funds from the public, credit transactions and bank payment services.

##### **Section 2 Definition of transactions closely linked to banking transactions**

Art. L. 311-2. - Credit institutions may also carry out transactions related to their business such as:

1. Foreign exchange transactions;
2. Transactions relating to gold, precious metals and coins;
3. Investing in, subscribing to, buying, managing, providing custody for and selling securities and any other financial product;
4. Consultancy and assistance relating to asset management;
5. Consultancy and assistance relating to financial management, financial engineering and, more generally, all services intended to facilitate the creation and development of firms, without prejudice to the laws relating to the illegal practice of certain professions;
6. Simple leasing of movable or immovable property for institutions authorised to carry out leasing transactions.
7. The payment services referred to in paragraph II of Article L. 314-1.

Where it consists of providing investment services within the meaning of Article L. 321-1, the provision of related transactions and custody shall be subject to the prior approval referred to in Article L. 532-1.

##### **Section 3 Definition of transactions that provide or manage the means of payment**

Article L. 311-3. - Any instrument which enables any person to transfer funds shall be deemed to be a means of payment, regardless of the medium or the technical process used.

Transactions that provide or manage means of payment include the banking payment services referred to in Article L. 311-1 and the payment services listed in paragraph II of Article L. 314-1.

Article L. 311-4. - The following activities shall not be deemed to constitute the provision, or management of, means of payment:

1 Payment transactions carried out via a telecommunications device or any other digital or IT device where the operator of the telecommunications, digital or IT system does not act solely in an intermediary capacity. This is the case where the goods or services purchased are delivered, and must be used, via that same telecommunications, digital or IT device;

2 Payment transactions carried out between a parent company and its subsidiary, or between subsidiaries of the same parent company, or within a group of companies, without any other payment service provider from outside that group acting as intermediary.

#### **Section 4 Clearing**

Article L. 311-4.

## **CHAPTER II Accounts and Deposits**

### **SECTION I The right to hold an account and relations with the customer**

#### **Subsection 1 The right to hold an account**

Art. L. 312-1. - Any individual or legal entity domiciled in France who/which does not hold a deposit account shall be entitled to open such an account with the credit institution of his/its choice.

The opening of such an account shall take place after submission of a sworn statement to the credit institution attesting to the fact that the applicant does not already hold an account. In the event of the chosen institution refusing, the person may refer to the Banque de France and request that it designate a credit institution located in the vicinity of his domicile, or at another place of his choosing, within one working day of receiving the documents required and bearing in mind the market share of each institution concerned. The credit institution which refused to open an account shall tell the applicant that he may ask the Banque de France to designate a credit institution which will open an account for him. Where the latter is an individual, it offers to act on his behalf by sending the application for the designation of a credit institution to the Banque de France, along with the information required to open an account.

The Association Française des Établissements de Crédit et des Entreprises d'Investissement referred to in Article L. 511-29, shall adopt a banking accessibility charter to increase the effectiveness of the right to hold an account. Said charter

stipulates the time limits and terms that credit institutions must comply with when sending the information required to open an account to the Banque de France. It specifies the information documents credit institutions must make available to their customers and the training actions they must implement.

The banking accessibility charter, approved by order of the Minister for the Economy after consultation with the Comité Consultatif du Secteur Financier and the Comité Consultatif de la Législation et de la Réglementation Financières, applies to all credit institutions. Monitoring of compliance with the charter shall be carried out by the Autorité de Contrôle Prudentiel pursuant to the procedure set forth in Article L. 612-31.

Credit institutions may only limit the services associated with the opening of a deposit account to the basic banking services in circumstances specified by decree.

Moreover, an institution designated by the Banque de France which limits the use of a deposit account to the basic banking services provides said services on a scale of charges determined by decree.

Any decision to close an account at the initiative of the credit institution designated by the Banque de France must be explained in a written notification sent to the customer, and to the Banque de France for information purposes. The accountholder must be given at least two months' notice.

These provisions shall apply to an *interdit bancaire* (an individual barred from holding a current account for having issued a cheque without cover).

## Subsection 2 Relations between credit institutions and customers

Art. L. 312-1-1. - I. - Credit institutions shall be required to inform their customers and the public of the general conditions and scale of charges applicable to the transactions associated with the administration of a deposit account, as determined by order of the Minister for the Economy.

The servicing and maintenance of deposit accounts used by individuals for non-commercial purposes shall be governed by a written agreement between the customer and his credit institution (or the Post Office (see note)).

[Where a statement is put out pursuant to the stipulations of the agreement referred to in the previous paragraph which indicates, for information purposes, that overdrafts are authorised, it shall specify, immediately thereafter and in the same characters, the annual percentage rate within the meaning of Article L. 313-1 of the Consumer Code, regardless of the term of the authorised overdraft in question.]

Until 31 December 2009, credit institutions were required to inform their customers who do not have a deposit account agreement that they are entitled to have one, at least once a year.

The main stipulations that the deposit account agreement must contain, inter alia the general conditions and charges applicable to opening, servicing and closing the account, shall be determined by order of the Minister for the Economy.

Before the customer is bound by said agreement, the credit institution shall inform him of said conditions on paper or another durable medium. The credit institution may discharge this obligation by providing the customer with a copy of the draft deposit account agreement.

If, at the customer's request, said agreement is entered into by a remote communication medium which does not allow the credit

institution to comply with the previous paragraph, the latter shall meet its obligations as soon as possible after execution of the deposit account agreement.

Acceptance of the deposit account agreement is formalised when it is signed by the accountholder(s).

In the event of the credit institution proposing new payment services to its customer which are not covered by the deposit account agreement, the details of such new services shall be the subject of a payment service framework agreement governed by the provisions of sections 2 to 4 of Chapter IV of this Part relating to the payment service framework agreement or an amendment to the deposit account agreement as provided for in paragraph II of this article.

II. - Any proposal to amend the deposit account agreement shall be sent to the customer on paper or another durable medium not later than two months before the scheduled inception date thereof. Pursuant to the terms set forth in the deposit account agreement, the credit institution shall inform the customer that he shall be deemed to have accepted the amendment if he does not inform it of his non-acceptance thereof before said amendment's proposed date of entry into force; in the latter case, the credit institution shall also explain that, if the customer declines the proposed amendment, it may cancel the deposit account agreement without charge before the amendment's proposed date of entry into force.

III. - The customer may cancel the deposit account agreement at any time, barring any contractually stipulated notice period, said period being limited to thirty days.

After twelve months, the deposit account agreement may be cancelled without charge. In other cases, the cancellation charge must be proportionate to the costs incurred through such cancellation.

The credit institution may cancel an open-ended deposit account agreement after giving at least two months' notice. Charges correctly applied for the provision of payment services shall be payable by the customer only in proportion to the period elapsed as of the date of cancellation of the deposit account agreement. Where they were paid in advance, such charges shall be reimbursed on a pro rata basis.

The account agreement may, with the customer's consent, be adapted before expiry of the two-month period referred to in paragraph II if he has the benefit of the overindebtedness procedure in order to facilitate implementation of the corrective measures envisaged in Part III of Book III of the Consumer Code. The Association Française des Établissements de Crédit referred to in Article L. 511-29 of this code shall adopt professional standards which stipulate the terms, conditions and duration of deposit account maintenance and adaptations, of the means of payment in particular, likely to facilitate their operation and avoid incidents.

Said standards, which are approved by the Minister for the Economy after consultation with the Comité Consultatif du Secteur Financier and the Comité Consultatif de la Législation et de la Réglementation Financières, shall be applied by all credit institutions. Monitoring of compliance with said standards shall be carried out by the Autorité de Contrôle Prudentiel under the procedure set forth in Article L. 612-31.

IV. - At any time during the contractual relationship, the credit institution provides the terms and conditions of the deposit account agreement on paper or another durable medium if the user so requests.

The credit institution shall not refuse to provide the customer with an agreement drawn up on paper.

V. - For each payment transaction referred to in Article L. 314-2 covered by a deposit account agreement and ordered by the payer, the payment service provider provides the latter, at its

request, with information concerning the maximum turnaround time for that specific transaction, the charges it must pay and, where relevant, a breakdown of said charges.

*Amended by Order No. 2010-737 of 1 July 2010 .Art. 16 Official Journal of 2 July 2010 effective 1 May 2011*

NB: In this version of the article "the Post Office's financial services are deleted"; textual amendments should be made as necessary.

Art. L. 312-1.2. - I. - 1. The selling or offering for sale of bundled products or services is prohibited unless the products or services included in the bundled offer may be purchased individually or cannot be separated.

2. The selling or offering for sale of products or services to a customer which give immediate or eventual entitlement to a pecuniary advantage or to a benefit in kind in the form of products, goods or services having a value above a threshold set is prohibited, according to the type of product or service offered to the customer, by a regulation introduced by order of the Minister for the Economy after consultation with the Comité Consultatif du Secteur Financier instituted by Article L. 614-1.

These provisions shall also apply to the payment services referred to in paragraph II of Article L. 314-1.

Art. L. 312-1-3 and 4

## Section 2 Funds received from the public

### *Subsection 1*

Art. L. 312-2. Funds which an entity accepts from a third party, in particular in the form of deposits, with the right to use them for its own account subject to its returning them shall be deemed to be funds received from the public. The following shall not be deemed to be funds received from the public, however:

1. Funds received or left in an account by a partnership's named or limited partners, members or shareholders holding at least 5% of the share capital, directors, members of the Executive Board or the Supervisory Board or executives, and likewise funds deriving from equity loans;

2. Funds which a firm receives from its employees, subject to the amount thereof not exceeding 10% of its equity. Funds received from employees by virtue of special laws are not taken into account for the calculation of this threshold.

*Subsection 2 and Art. L. 312-3.*

## Section 3 The depositors' guarantee

Art. L. 312-4. Credit institutions authorised in France belong to a deposit guarantee fund (Fonds de Garantie des Dépôts) whose purpose is to indemnify the depositors in the event of their deposits or other repayable funds being unavailable.

The deposits and other funds of credit institutions, payment institutions, insurance companies, undertaking for collective investment in transferable securities, pension funds, investment

firms and the persons referred to in Article L. 518-1 or 1 of Article L. 312-2 shall be excluded from said indemnity. Other deposits and funds may be excluded from the indemnity, as provided for in an order issued by the Minister for the Economy, on account of the available information relating to the firm's situation, the specific advantages that the depositor concerned may have benefited from, the specific nature of certain funds or deposits, or the illicit source of the funds concerned.

Art. L. 312-5. - I. - The guarantee fund intervenes at the behest of the Autorité de Contrôle Prudentiel when it establishes that one of the institutions referred to in Article L. 312-4 is no longer able, immediately or in the near future, to return the funds it has received from the public in accordance with the legislative, regulatory or contractual conditions applicable to their return. Recourse to the guarantee fund automatically entails the deletion of said institution from the list of authorised credit institutions.

II. - As a precautionary measure, and on a proposal from the Autorité de Contrôle Prudentiel, the guarantee fund may also intervene with a credit institution whose situation gives grounds for fearing that the deposits or other repayable funds may not be available when due, while also taking due account any support it may benefit from. Where the guarantee fund agrees to intervene in an institution as a precautionary measure, and after consulting the Autorité de Contrôle Prudentiel, it determines the terms of its intervention. It may make its intervention conditional upon the total or partial sale of the credit institution or the cessation of its business and the sale of its assets.

The monies paid by the guarantee fund in connection with preventive intervention shall be covered by the privilege referred to in Article L. 611-11 of the Commercial Code.

The guarantee fund may not be held liable for any damage incurred on account of the support provided, save for the cases specifically enumerated in Article L. 650-1 of that same code.

III. - For the purposes of these provisions, the guarantee fund may, at the behest of a central body referred to in Article L. 511-30, participate in action taken by the latter by assuming responsibility for a portion of the cost of the measures intended to guarantee the solvency of a credit institution affiliated to said central body.

For the purposes of the provisions of paragraphs II and III, the guarantee fund may acquire a credit institution's capital shares or, with the approval of the central body concerned, its membership shares.

Actions in which the court has unlimited jurisdiction sought against decisions of the guarantee fund handed down pursuant to this article must be brought before the administrative courts.

Art. L. 312-6. The deposit guarantee fund is subrogated in the rights of the beneficiaries of its intervention in direct proportion to the sums it has paid.

The guarantee fund may bring any action for damages against the de facto and de jure executives of the institutions it intervenes in to secure repayment of some or all of the sums it has paid. It shall inform the Autorité de Contrôle Prudentiel thereof.

Art. L. 312-7. - I. - The guarantee fund's member institutions provide it with the financial resources needed to carry out its tasks as determined by the Minister for the Economy. The guarantee fund may, moreover, issue non-tradable membership certificates in registered form which the member firms subscribe to when they join.

II. - Where the losses incurred by the guarantee fund are not covered by the contributions already called, the membership certificates referred to in paragraph I can no longer yield a return. The par value of each of the said certificates shall then be reduced

in the proportion necessary to absorb the losses. The membership certificates shall be redeemable only in the event of the member's authorisation being withdrawn under the terms laid down by the Minister for the Economy. Where a member institution is struck off, its membership certificate shall be cancelled and the sums paid shall be retained by the guarantee fund.

III. - The contributions payable to a central body referred to in Article L. 511-30 by the affiliated credit institutions are paid directly to the guarantee fund by said central body.

IV. - The guarantee fund may borrow from its members. For this purpose, it may provide, or request its members to provide it with, the contractually required guarantees.

Art. L. 312-8. Any member which fails to pay its contribution to the guarantee fund when requested to do so shall incur the penalties stipulated in Article L. 612-39 and also to late-payment penalties paid directly to the guarantee fund pursuant to the terms and conditions laid down in said fund's rules and regulations.

Art. L. 312-9. The deposit guarantee fund is a private-law legal entity. It is managed by an Executive Board acting under the direction of a Supervisory Board. The members of the Executive Board and the Supervisory Board are subject to the incapacities referred to in Article L. 500-1.

Art. L. 312-10. The Supervisory Board exercises permanent control over the administration of the deposit guarantee fund. It draws up the guarantee fund's rules and regulations and the rules for the use of its funds, which are validated by an order issued by the Minister for the Economy. It elects its chairman from among its members.

The Supervisory Board approves the accounts and appoints the auditors. A copy of the approved accounts is sent to the Minister for the Economy at the end of each financial year. The guarantee fund is subject to auditing by the General Inspectorate of Finance .

The Supervisory Board is composed of ten members, each representing one or more of the guarantee fund's members, with apportionment as follows:

1. Four members respectively representing the four credit institutions, or groups of credit institutions affiliated to the same central body, which are the largest contributors, as ex-officio members;

2. Six representatives of the other credit institutions.

Art. L. 312-11. The Supervisory Board's decisions shall be taken on a simple majority vote, with each member having a number of votes proportionate to its total financial contribution to the guarantee fund and said of the institutions which appointed it as their representative. In the event of there being a hung vote, the chairman shall have a casting vote.

For the purposes of Article L. 312-10 and of this article, the amount of the payment made by the central body on behalf of the institutions affiliated to it shall be taken into account.

Art. L. 312-12. The Executive Board is composed of at least two members appointed by the Supervisory Board who confer on one of their number the status of chairman. The members of the Executive Board shall not simultaneously exercise functions within institutions or firms which are members of the guarantee fund, nor shall they receive remuneration from any of them. Its chairman shall not exercise his functions until he has received authorisation from the Minister for the Economy. The

implementing provisions for the provisions of this article are set forth, as and when necessary, in an order issued by the Minister for the Economy.

Art. L. 312-13. The Minister for the Economy, the governor of the Banque de France, as chairman of the Autorité de Contrôle Prudentiel , and the chairman of the Autorité des Marchés Financiers, or their representatives, may address the Supervisory Board and the Executive Board if they so request..

Art. L. 312-14. The members of the Executive Board and the Supervisory Board, and likewise any person who, on account of his duties, has access to the documents and information held by the guarantee fund, are bound by professional secrecy. Such secrecy cannot be invoked against the judicial authorities acting within the purview of legal proceedings or the administrative or civil courts ruling on an appeal against a decision of the deposit guarantee fund, or against the Autorité de Contrôle Prudentiel .

Art. L. 312-15. The members of the guarantee fund's Executive Board have access to all the accounting and financial records and auditors' reports of the institution in respect of which the Autorité de Contrôle Prudentiel requests action by the guarantee fund pursuant to Article L. 312-5.

Art. L. 312-16. An order issued by the Minister for the Economy stipulates:

1. The ceiling for compensation per depositor, the terms and conditions of, and time limits for, compensation and the arrangements for payment thereof, and the rules relating to the provision of information to customers;

2. The particulars of the membership certificates, and the terms and conditions of their yield and redemption in the event of authorisation being withdrawn from their subscriber, after deduction, where applicable, of any losses incurred by the fund;

3. The global amount of the annual contributions payable by members;

4. The circumstances in which a portion of said contributions need not be paid to the guarantee fund subject to appropriate guarantees being put in place;

5. The amount of the minimum contribution of each credit institution which is a member of the guarantee fund;

6. The distribution key for said annual contributions based on the amount of the deposits and other repayable funds weighted in line with the contributions already paid and indicators of the financial situation of each credit institution concerned, and, inter alia, the amount of the equity and the commitments, as well as the European solvency ratio, thus reflecting the objective risks to which the member exposes the fund;

7. The terms and conditions applicable to the appointment of Supervisory Board members and the duration of their term of office.

Said order may be amended only after consultation with the chairman of the deposit guarantee fund's Executive Board.

Art. L. 312-17. Until such time as they are covered by a guarantee system in their country of origin, branches of credit institutions having their registered office in a Member State of the European Community other than France shall be required to join a guarantee system in France as stipulated by the Minister for the Economy.



Art. L. 312-18. An order of the Minister for the Economy issued after consultation with the Autorité des Marchés Financiers, determines the conditions under which credit institutions and investment firms authorised in another European Economic Area Member State may join the guarantee fund.

## CHAPTER III Loans

### Section 1 General provisions

#### Subsection 1 Definition

Art. L. 313-1. Any act whereby a person, acting in return for payment, makes, or promises to make, funds available to another person or gives an undertaking in favour of said person by signing an aval, a security bond or other guarantee, constitutes a credit transaction.

Leasing, and, in general, all rental transactions with an option to purchase, are treated as credit transactions.

#### Subsection 2 Interest rates

##### Paragraph 1 The legal interest rate

Art. L. 313-2. The legal interest rate is, for all purposes, set by decree for the entire calendar year.

It is equal, for the year in question, to the arithmetic mean of the last twelve monthly averages of the actuarial rate of return on the thirteen-week fixed-rate Treasury bill auctions.

Art. L. 313-3. In the event of a financial penalty being imposed by a court decision, the legal interest rate is increased by five points when two months have elapsed since the court's decision became enforceable, if only as a provision. This effect is attached as of right to an adjudication of forced sale upon seizure of real property, four months after its delivery.

At the request of the debtor or the creditor, however, and in view of the debtor's situation, the enforcement judge may exempt the debtor from said increase or reduce the amount thereof.

##### Paragraph 2 The effective annual percentage rate

Art. L. 313-4. - The rules relating to the effective annual percentage rate of loans are set forth in Articles L. 313-1 and L. 313-2 of the Consumer Code, reproduced hereunder:

*Art. L. 313-1. - In all cases, for the determination of the effective annual percentage rate of the loan, and that of the effective rate used as a reference, the costs fees or payments of all kinds, direct or indirect, are added to the interest, including said which are paid or due to intermediaries who were in some way involved in the granting of the loan, even if such costs, fees or payments relate to actual disbursements.*

*However, for the purposes of Articles L. 312-4 to L. 312-8, the charges relating to any guarantees associated with the loans and the fees of ministerial officers shall not be included in the effective annual percentage rate defined*

*above where the amount thereof cannot be precisely indicated before the contract is actually entered into.*

*[For loan agreements falling within the scope of Chapter I of this Part, the interest rate applied, known as the "Effective annual percentage rate", does not include the cost of any notarial deed.]*

*Moreover, for loans which are subject to graduated amortisation, the effective annual percentage rate calculation must take account of the debt's conditions of amortisation.*

*A decree issued following consultation with the Conseil d'Etat shall determine this article's implementing provisions.*

*Amended by Order No. 2010-737 of 1 July 2010 Art. 12 Official Journal of 2 July 2010 **effective 1 May 2011***

*Art. L. 313-2. - The effective annual percentage rate determined as indicated in Article L. 313-1 must be referred to in any document which records a loan agreement governed by this section.*

*Any violation of the provisions of this article shall incur a fine of 4,500 euros.*

#### Paragraph 3 The usury rate

Art. L. 313-5. The usury rate is defined in Article L. 313-3 of the Consumer Code, reproduced hereunder:

*Art. L. 313-3. - Any contractual loan granted at an effective annual percentage rate which, at the time of its granting, is more than one third higher than the average percentage rate applied by the credit institutions during the previous quarter for loans of the same type presenting a similar risk factor, as specified by the administrative authority after consultation with the Comité Consultatif du Secteur Financier. [The categories of transactions for loans to private individuals which do not come within the scope of Articles L. 312-1 to L. 312-3 are defined according to the amount of the loans.]*

*Loans granted under hire-purchase agreements are, for the purposes of this section, treated as contractual loans and deemed to be usurious on the same basis as cash loans having the same object.*

*The procedures for calculating and publishing the average effective rates referred to in the first paragraph are determined by the regulations.*

*[Provisional measures, derogating from the preceding paragraphs, may be implemented by the Minister for the Economy on a reasoned proposal from the governor of the Banque de France for a period which shall not exceed eight consecutive quarters, in the event of:*

*– a variation of exceptional magnitude in the cost of the credit institutions' funds;*

*– changes to the definition of the transactions of the same kind referred to in the first paragraph.*

*A commission chaired by the governor of the Banque de France is responsible for monitoring and analysing, inter alia with regard to the method used to set the usury rate, the level and trend of the interest rates charged on loans to private individuals. The commission also examines the credit institutions' financing arrangements and analyses the level, trend and components of their margins. In addition to the governor of the Banque de France, the commission includes a member of parliament, a senator and the Director General of the Treasury and of Economic Policy. It meets at least once each quarter, when convened by its chairman, for a period of two years. It draws up an annual report which is submitted to Parliament and to the Government.]*

*The provisions of this article and said of Articles L. 313-4 to L. 313-6 shall not apply to loans granted to an individual for business purposes or to a legal entity carrying on an industrial, commercial, craft-trade, agricultural or non-commercial business activity."*

Art. L. 313-5-1. With regard to overdraft facilities, any contractual loan granted to an individual for business purposes or to a legal entity engaged in an industrial, commercial, craft-trade, agricultural or non-commercial business activity at an effective annual percentage rate which, at the time of its granting, is more than one third higher than the average effective rate applied by credit institutions during the previous quarter for loans of the same type presenting a similar risk factor, as specified by the administrative authority after consultation with the Comité Consultatif du Secteur Financier, is a usurious loan.

The procedures for calculating and publishing the average effective rates referred to in the first paragraph are determined by decree.

Art. L. 313-5-2. Where a contractual loan is usurious, the excessive charges received within the meaning of Articles L. 313-4 and L. 313-5-1 shall be applied as of right to the normal interest and, subsidiarily, to the capital of the loan.

If the loan is extinguished in regard to both principal and interest, the sums wrongfully received must be returned, together with interest at the legal rate calculated from the day of their settlement.

### Subsection 3 Wilful defaults register

Art. L. 313-6. - The rules relating to the wilful defaults register are laid down in Articles L. 333-4 and L. 333-5 of the Consumer Code, reproduced hereunder:

*"Art. L. 333-4. - I. - A national register of information relating to instances of wilful default on loans granted to individuals for non-business purposes has been established. Said register is administered by the Banque de France. It is subject to the provisions of Act No. 78-17 of 6 January 1978 relating to information technology, data protection and privacy.*

*The purpose of said register is to provide the credit institutions referred to in Part I of Book V of the Monetary and Financial Code, the payment institutions referred to in Part II of that same Book V and the institutions referred to in paragraph 5 of Article L. 511-6 of that same code with a means of assessing the creditworthiness of persons applying for a loan. The registration of an individual in the register does not constitute a ban on granting credit, however.*

*The register may provide the credit institutions and payment institutions with a decision-making tool for their decisions relating to the allocation of means of payment.*

*The information it contains may also be taken into account by the institutions referred to in the second paragraph for management of the risks associated with the loans taken out by their customers.*

*II. - The institutions and entities referred to in the second paragraph of paragraph I shall be required to declare instances of wilful default, as defined in the order referred to in Article L. 333-5, to the Banque de France as stipulated in an order. Upon receipt of said declaration, the Banque de France immediately enters such instances of wilful default in the register and, at the same time, makes such information available to all institutions and entities having access to the register. The costs associated with said declaration cannot be invoiced to the individuals concerned.*

*The information relating to such instances of default shall be immediately deleted upon receipt of a declaration of full payment of the monies owed from the institution which originated the register entry. It shall not, in any event, be held in the register for more than five years with effect from the date of registration by the Banque de France of the instance of default giving rise to the declaration.*

*III. - As soon as a debtor refers an instance of default to the commission established by Article L. 331-1, the latter shall inform the Banque de*

*France thereof so that an entry may be made in the register. The clerk's office of the court of enforcement does likewise where said court acknowledges the situation referred to in Article L. 331-2 in an application made by the party concerned pursuant to paragraph IV of Article L. 331-3 or where the debtor has benefited from a write-off of his debts under a personal recovery procedure pursuant to L. 332-9 or L. 332-5.*

*The register records the measures set out in the contractual recovery plan referred to in Article L. 331-6. The commission shall inform the Banque de France of such measures. The entry shall be maintained throughout the entire term of the contractual plan, subject to a maximum period of eight years.*

*The register also records the measures taken under Articles L. 331-7, L. 331-7-1 and L. 331-7-2, which the commission, or the clerk's office of the court of enforcement where they are subject to its approval, reports to the Banque de France. The entry shall be maintained throughout the entire period during which such measures are applied, subject to a maximum period of eight years.*

*Where the measures of the contractual recovery plan referred to in Article L. 331-6 and said applied pursuant to Articles L. 331-7, L. 331-7-1 and L. 331-7-2 are strictly adhered to, the information relating to the entries giving rise to the declaration are deleted after a period of five years with effect from the date on which the contractual recovery plan was signed, the date of the commission's decision to impose measures or the date on which the measures recommended by the commission became enforceable. Where a contractual recovery plan referred to in Article L. 331-6 and measures applied pursuant to Articles L. 331-7, L. 331-7-1 and L. 331-7-2 are imposed on the same person, the entry shall be maintained throughout the overall term of the plan and said measures, subject to a maximum period of eight years.*

*For persons having benefited from the personal recovery procedure, the information relating to the relevant entries shall be deleted after a period of five years with effect from the date of approval or closure of the procedure. The same five-year term applies to individuals having undergone a court-ordered liquidation procedure pursuant to Article L. 670-6 of the Commercial Code.*

*IV. - The Banque de France shall be released from professional secrecy in regard to the transmission of personal information held in the register to the institutions referred to in the second paragraph of paragraph I.*

*The manner in which the Banque de France and the institutions referred to in the second paragraph of paragraph I inform persons of their registration in, and deletion from, the register, and also of their rights, is stipulated in an order issued after consultation with the Commission Nationale de l'Informatique et des Libertés (national commission for data protection and privacy).*

*The Banque de France and the institutions referred to in the second paragraph of paragraph I are prohibited from providing copies of the information held in the register to anyone, under pain of the penalties stipulated in Articles 226-21 and 226-22 of the Criminal Code. This prohibition shall not apply to the persons concerned, who exercise their right of access to their personal information pursuant to Article 39 of the aforementioned Act 78-17 of 6 January 1978.*

*The gathering of information held in the register by persons other than the Banque de France and the institutions referred to in the second paragraph of paragraph I of this Article shall also incur the penalties stipulated in Article 226-18 of the Criminal Code.]*

*Replaced by Order No. 2010-737 of 1 July 2010 Art. 48 Official Journal of 2 July 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 40 Official Journal of 23 October 2010*

*Art. L. 333-5. - An order of the Minister, issued after consultation with the Commission Nationale de l'Informatique et des Libertés and the Comité Consultatif du Secteur Financier, determines, inter alia, the procedures for gathering, recording, storing and consulting such information.*

*Said order also lays down the conditions under which the institutions referred to in the second paragraph of paragraph I of Article L. 333-4 may justify having consulted the register pursuant, inter alia, to Article L. 311-9.*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 II Official Journal of 2 August 2003*

*Amended by Act No. 2003-710 of 1 August 2003 Art. 35 XIII, Art. 36 Official Journal of 2 August 2003*

*Amended by Act No. 2005-516 of 20 May 2005 relating to the regulation of postal activities Art. 16 IV/2 Official Journal of 21 May 2005*

*Amended by Order No. 2010-737 of 1 July 2010 Art. 51 Official Journal of 2 July 2010*

## Section 2 Categories of loans and similar transactions

### Subsection 1 Leasing

Art. L. 313-7. The leasing transactions referred to in this subsection include:

1. The leasing of capital goods or tools specifically purchased for leasing by firms which retain ownership thereof, where such leases, regardless of their nature, give the lessee the possibility of buying some or all of the leased goods at an agreed price which takes account, at least partially, of the instalments paid under the lease;

2. Transactions whereby a firm leases real estate for business use which it has bought or had built, where such transactions, regardless of their nature, enable the lessees to become the owners of some or all of the leased properties, upon expiry of the lease at the latest, via assignment upon execution of a promise to sell or via direct or indirect acquisition of title to the land on which the leased property is built, or via transfer, as of right, of title to the buildings standing on the land belonging to said lessee.

Where a leasing transaction is entered into for a lease's right of renewal, said right may be invoked only by the lessor, as an exception to the provisions of Article L. 145-8 of the Commercial Code. The lessee's other rights and obligations deriving from the provisions of the aforementioned decree are contractually distributed between the owner, the lessor and the lessee.

3. Leasing transactions relating to a handicraft establishment or other business concern, or to one of its intangible elements, that are linked to a unilateral promise to sell at an agreed price which takes account, at least partially, of the instalments made under the lease, excluding any lease entered into with the former owner of the handicraft establishment or other business.

4. The leasing of shares or partnership shares as envisaged in Articles L. 239-1 to L. 239-5 of the Commercial Code linked to a unilateral promise to sell at an agreed price which takes account, at least partially, of the instalments paid under the lease.

Art. L. 313-8. In the event of property included in a leasing transaction being assigned, and throughout the term of the lease, the assignee is bound by the same obligations as the assignor, who remains guarantor thereof.

Art. L. 313-9. - The provisions of the second and third paragraphs of Article L. 145-4 of the Commercial Code shall not apply to real-property leasing contracts.

Under pain of being declared null and void, such contracts set forth the circumstances in which they may be cancelled, where appropriate, at the lessee's request.

Art. L. 313-10. The transactions referred to in Article L. 313-7 are subject to disclosure as determined by decree. Such decree specifies the circumstances in which failure to disclose entails unenforceability against third parties.

Art. L. 313-11. Registrations of leasing transactions for moveable property made pursuant to Article L. 313-10 lapse after five years, unless they are renewed.

### Subsection 2 Business loans

#### Paragraph 1 Working capital loans

Art. L. 313-12. Any open-ended facility, other than an occasional one, that a credit institution grants to a firm may be reduced or terminated only after written notice has been given and upon expiry of a notice period determined at the time when the facility was granted. Under pain of the termination of the facility being declared null and void, said notice period shall not be shorter than sixty days. In accordance with the applicable laws, and where so requested by the firm concerned, the credit institution provides an explanation for said reduction or termination which cannot be requested by, or disclosed to, a third party. The credit institution shall not be held liable for any financial damage suffered by other creditors through its having honoured its commitment throughout said period.

Whether the credit facility is open-ended or fixed-term, the credit institution is not required to comply with a notice period in the event of seriously reprehensible conduct on the part of the recipient of the facility or in the event of the latter's situation being irreparably compromised.

Failure to comply with these provisions may render the credit institution financially liable.

Art. L. 313-12-1. - The credit institutions give firms that apply for, or already have, a loan an explanation concerning the factors that led to the credit ratings they have given them, if they so request. Such explanations or factors cannot be requested by, or disclosed to, a third party.

Art. L. 313-12-2. - Each quarter, the Banque de France publishes a document, based on the volume of the outstanding loans and new loans granted to firms by the credit institutions, which shows the share and volume of said granted:

- to firms in existence for less than three years;
- to small and medium-sized enterprises.

The figures show the number of firms in each category.

#### Paragraph 2 Equity loans

Art. L. 313-13. The State, without prejudice to Articles L. 313-18 to L. 313-20, credit institutions, commercial companies, public institutions included on a list determined in a decree issued following consultation with the Conseil d'Etat, insurance companies (including mutual insurers), non-profit-making associations referred to in paragraph 5 of Article L. 511-6, mutual

societies and unions governed by the Mutuality Code and institutions that come under Parts II and III of Book IX of the Social Security Code may grant facilities to handicraft establishments and industrial and commercial companies from their available long-term resources in the form of equity loans governed by Articles L. 313-14 to L. 313-20. The provisions of this article do not impede application of the penalties set forth in Part IV of Book II of the Commercial Code.

The granting of an equity loan to a sole trader does not, of itself, form a company between the parties to the contract.

#### Subparagraph 1 General scheme

Art. L. 313-14. Equity loans are shown on a specific line on the balance sheet of both the institution that grants them and the firm that receives them and are also referred to in the appendix provided for in Article L. 123-12 of the Commercial Code.

They are treated as equity for the purpose of assessing the financial situation of the firms to which they are granted.

Art. L. 313-15. – In the event of a voluntary winding-up, court-ordered liquidation or plan to sell the debtor firm, equity loans cannot be repaid until all other secured and unsecured creditors are paid off in full. Unless otherwise contractually stipulated with the unanimous consent of the equity loan holders, said creditors have the same priority with regard to distributions.

Art. L. 313-16. – In the event of the debtor firm being placed under a recovery plan or a court-ordered reorganisation plan, repayment of the equity loans and payment of interest thereon are suspended throughout the entire term of the plan.

Art. L. 313-17. Without prejudice to Articles L. 313-1 to L. 313-6 of the Consumer Code, the fixed interest applied to an equity loan may be increased, under the conditions laid down in the contract, through a right to share in the borrower's net profit or the profit realised by the borrower on the use of property totally or partly financed by said loan, or to the capital gain realised on the sale thereof or through retrocession of the profit realised.

Where a right to share in the borrower's net profit exists, it is exercised, for individuals, through a preferential deduction from the book profit and, for companies, from the distributable profits before any other allocation is made.

In cases that require the approval of a special meeting as indicated in Articles L. 225-99 and L. 228-35-6 of the Commercial Code or a meeting of the general body of creditors pursuant to Article L. 228-103 of that same code, the Extraordinary General Meeting shall approve the clause conferring said right. In other cases, the partners shall approve it in the manner stipulated for approval of the accounts.

#### Subparagraph 2 Equity loans granted by the State

Art. L. 313-18. The granting of equity loans by the State is contingent upon specific and dated undertakings given by the borrower in industrial or commercial as well as financial terms.

If the content or the repayment schedule of the undertakings is not complied with, the loan becomes immediately repayable, with the exception of the situation envisaged in Article L. 313-16.

Art. L. 313-19. The fixed interest applied to the equity loan is increased, as provided for in the contract, through the invoking of a right to share, *inter alia*, in the borrower's net profit.

The invoking of such a right constitutes a charge for the financial year.

The effective annual percentage rate of the interest paid to the State by the borrower cannot be lower than the average interest rate applied to the current accounts of the partners in the borrowing company.

Art. L. 313-20. The amount of each equity loan granted by the State is published each year.

#### Paragraph 3 Credit guarantees for sole traders

Art. L. 313-21. – Where a credit institution envisages granting any credit facility to a sole trader for business purposes and intends to request a lien on property which is not necessary to operate the business or a guarantee given by an individual, it must inform the trader in writing of his right to propose a guarantee on the items that are needed to operate the business or to request a guarantee from another credit institution, an insurance company authorised to issue guarantees or a mutual guarantee society referred to in Articles L. 515-4 to L. 515-12. The credit institution shall indicate the amount of the guarantee it is seeking, consistent with the amount of the credit facility requested.

In the event of the sole trader failing to reply within fifteen days or the credit institution refusing the guarantee proposed by the sole trader, the credit institution shall inform the latter of the exact amount of the guarantees it wishes to obtain on property which is not necessary to operate the business or from any other guarantor. If the trader disagrees, the credit institution may decide not to make the credit facility available but does not incur any liability thereby.

A credit institution which has failed to comply with the formalities stipulated in the first and second paragraphs shall not, in its relations with a sole trader, avail itself of the guarantees that it would have obtained. If a guarantee is provided on real property or movables giving rise to disclosure, the credit institution may no longer avail itself of it after the guarantee registration has been deleted.

Art. L. 313-21-1. Companies selected to contribute to the creation of business or the development of jobs within the framework of an agreement entered into with the State pursuant to Articles L. 1233-84 to 89 of the Labour Code and companies approved by the Minister for the Economy are authorised to grant partial guarantees in favour of credit institutions granting loans for development projects of companies located in labour market areas experiencing economic difficulties or showing signs of economic weakness, and to the craft-industry mutual guarantee societies that guarantee such projects.

The implementing provisions for these provisions, *inter alia* said relating to approval and to the scope of the guarantees, are determined in a decree issued following consultation with the Conseil d'Etat.

(Paragraph 4 Information to be provided to guarantors)

[Paragraph 4 Guarantee commitments scheme]



Art. L. 313-22. Credit institutions which have granted a credit facility to a company subject to a guarantee from an individual or a legal entity shall be required, by 31 March of each year at the latest, to inform the guarantor of the amount of the principal, interest, commissions, fees and incidental expenses that were outstanding under the guaranteed obligation as of 31 December of the previous year, as well as the term of said commitment. If the commitment is open-ended, they also make reference to the right to cancel it at any time and the conditions applicable thereto.

Failure to comply with the formality provided for in the previous paragraph entails, in the relations between the guarantor and the institution bound by such formality, forfeiture of the interest due since the previous report and until the date of presentation of the new information. Payments made by the principal debtor shall be deemed, in the relations between the guarantor and the institution, to be applied priorly to settlement of the principal amount of the debt.

[Art. L. 313-22-1. – Credit institutions which have provided a security bond, aval or guarantee, whether it be statutory, regulatory or contractual, have as of right and in all cases, a remedy against the customer as the originator of the commitment, its co-obligors and the persons who stood surety and, for payments made under their commitment, subrogation to the creditor's rights as provided for in paragraph 3 of Article 1251 of the Civil Code.]

*Inserted by Order No. 2010-737 of 1 July 2010 Art. 26 Official Journal of 2 July 2010 effective 1 May 2011*

## Section 3 Procedures relating to discounting of business receivables

### Subsection 1 Sale and pledge of business receivables

Art. L. 313-23. Any credit which a credit institution grants to a private-law or public-law legal entity, or to an individual for use in connection with his business activities, may give rise to the assignment or pledge by the recipient of the credit of any debt which it may hold on a third party private-law or public-law legal entity, or individual if it relates to his business activities, for the benefit of said institution, simply upon submission of an advice note.

Cash claims which are due and payable may be assigned or pledged. Debts resulting from a deed which has already been executed, or which is yet to be executed but whose amount and due date are not yet determined, may also be assigned or pledged.

The advice note must include the following elements:

1. The designation "deed of assignment of receivables" or "deed of pledge of receivables", as applicable;
2. An indication to the effect that the document is subject to the provisions of Articles L. 313-23 to L. 313-34;
3. The name of the credit institution which is the recipient;
4. The designation or individualisation of the receivables granted or pledged, or of the elements likely to create said designation or said individualisation, particularly by indication of

the debtor, the place of payment, the amount of the receivables or of their valuation and, where applicable, their due date.

However, where transmission of the debts assigned or pledged is effected via an IT process which makes it possible to identify them, the advice note may merely indicate, in addition to the elements indicated in paragraphs 1, 2 and 3 above, the means whereby they are transmitted, the number thereof and their global amount.

In the event of the existence or transmission of one of the receivables being challenged, the assignee may prove, by any means possible, that the receivable challenged is included in the global amount shown on the advice note.

A document from which one of the above indications is missing does not constitute a valid deed of assignment or pledge of receivables within the meaning of Articles L. 313-23 to L. 313-34.

Art. L. 313-24. Even where it is carried out to provide a guarantee and without a price stipulation, an assignment of receivables transfers title to the assigned receivables to the assignee.

Unless otherwise agreed, the signatory of the deed of assignment or the deed of pledge is a jointly and severally liable guarantor of payment of the assigned or pledged receivables.

Art. L. 313-25. The advice note is signed by the assignor. The signature is affixed either by hand or by any non-manual process. The advice note may be stipulated to order.

The date is affixed by the assignee.

Art. L. 313-26. The advice note may only be assigned to another credit institution.

Art. L. 313-27. The assignment or pledge shall take effect between the parties and become binding on third parties on the date indicated on the advice note upon its submission, regardless of the origination date, the maturity date or the due date of the receivables, without any further formality being required and regardless of the law applicable to the receivables and the law of the debtors' country of residence.

From that date onwards, the customer of the credit institution indicated as the recipient on the advice note shall not alter the scope of the rights attached to the receivables represented by the advice note without said institution's consent.

Service of the notification shall, as of right, entail transfer of the sureties, guarantees and accessories attached to each receivable, including mortgage sureties, and its enforceability against third parties without any further formality being required.

In the event of the date indicated on the advice note being challenged, the credit institution may prove the accuracy thereof by any means possible.

Art. L. 313-28. The credit institution may, at any time, forbid the debtor of the assigned or pledged receivable from making payment to the signatory of the advice note. With effect from such notification, the arrangements for which are determined by the decree issued following consultation with the Conseil d'Etat referred to in Article L. 313-35, the debtor may only validly settle his debt to the credit institution.

Art. L. 313-29. The debtor may undertake to pay the recipient directly, if the latter so requests: under pain of being declared null and void, said undertaking is recorded in a document entitled: "Deed of acceptance of the assignment or pledge of a business receivable".

In such cases, the debtor shall not raise objections against the credit institution founded on his personal relations with the signatory of the advice note unless the credit institution knowingly acted against the debtor's best interests by acquiring or receiving the receivable.

Art. L. 313-29-1. - Where some or all of the remuneration due under a partnership agreement or a contract referred to in the first paragraph of Article L. 6148-5 of the Public Health Code in respect of the investment costs, which include, inter alia, the development and design costs, construction costs and ancillary charges, interim interest costs, and financing costs, is assigned pursuant to Articles L. 313-23 to L. 313-29 of this code, the contract may, **to the extent envisaged in Article L. 313-29-2**, provide for such assignment to be subject to acceptance as provided for in Article L. 313-29.

Acceptance as **envisaged in Article L. 313-29** is contingent upon confirmation by the contracting public legal entity that the investments were made pursuant to the terms of the contract. With effect from such confirmation, and unless the assignee, by buying or receiving the debt, knowingly acted against the public debtor's best interests, no compensation and no objection founded on the debtor's personal relations with the holder of the partnership agreement or the contract referred to in the first paragraph of Article L. 6148-5 of the Public Health Code, such as the invalidation, annulment or termination of the contract, may be raised against the assignee, save for the four-year limitation governed by law No. 68-1250 of 31 December 1968 relating to the limitation period for receivables of the central government, the *départements*, the *communes* and the public institutions.

The contract holder is required to settle any debts it might owe to the contracting public legal entity on account of any non-fulfilment of its contractual obligations and, inter alia, any penalties imposed on it; a stop placed on an enforceable order issued by the public legal entity does not have suspensive effect in respect of the amount which was covered by the guarantee in favour of the assignee.

**Art. L. 313-29-2. – Where the contracting public legal entity accepts, as provided for in Article L. 313-29-1 or Article L. 515-21-1, one or more assignments of debt all of which relate to all or part of the payment due in respect of the investment costs and financing costs referred to in those same Articles L. 313-29-1 or L. 515-21-1, the public legal entity's global commitment in regard to said acceptance(s) shall not exceed 80% of the payment due in respect of the aforementioned investment costs and financing costs.**

## Subsection 2 Discounting of loans by the assignee or the pledgee

### Paragraph 1 General provisions

Art. L. 313-30. A credit institution which is the assignee or pledgee of receivables as provided for in Article L. 313-23 may, at any time, issue securities intended to discount some or all of the loans granted.

The successive bearers of said securities benefit from the rights enumerated in Articles L. 313-31 to L. 313-33 subject to the advice notes having been made available to the institution providing the financing pursuant to the agreements it has entered into with the credit institution.

Art. L. 313-31. Short-term credit transactions which have not given rise to an assignment or a pledge of receivables in favour of the credit institution may result in the issuing by said institution of securities intended to capitalise some or all of the loans granted.

The successive bearers of such securities benefit from the rights enumerated in Articles L. 313-32 and L. 313-33 subject to the advice notes recording said transactions having been made available to the institution providing the financing pursuant to the agreements it has entered into with the credit institution; such advice notes, known as "deeds of assignment of financial receivables", are subject, as and where necessary, to the provisions of Articles L. 313-23 to L. 313-29.

Art. L. 313-32. The successive bearers of the securities created by a credit institution pursuant to Articles L. 313-30 and L. 313-31 benefit from the rights relating to endorsement referred to in Articles L. 511-8 to L. 511-14 of the Commercial Code.

Art. L. 313-33. The rights attached to capitalisation securities shall apply to all the receivables indicated on the advice notes; they shall also apply to all interest and ancillary charges, as well as the guarantees associated with said receivables.

Art. L. 313-34. With effect from submission of the advice notes to the financing institution, and throughout the entire term thereof, the credit institution shall not, unless otherwise stipulated, assign the receivables represented by the advice notes in any form whatsoever.

Art. L. 313-35. A decree issued following consultation with the Conseil d'Etat determines the implementing provisions for Articles L. 313-23 to L. 313-34.

## Paragraph 2 Discounting of medium-term loans

Art. L. 313-36. Medium-term loans granted by a credit institution which are, at least in part, the subject of a rediscounting agreement of the issuing institution may give rise to the signing, by the borrower, of agreements which determine the amount of the loans and the conditions of their use and amortisation, and also, where applicable, the signing of bills having various due dates.

Art. L. 313-37. Where credit institutions which have granted the loans referred to in Article L. 313-36 issue securities in order to refinance some or all of said loans, the bearers of said securities benefit from the rights enumerated in Article L. 313-38 provided that the contracts or bills have been made available to the institution that is handling the rediscounting, pursuant to the agreements entered into between said institution and the credit institution.

Art. L. 313-38. The bearers of securities created by credit institutions benefit from the rights referred to in Articles L. 511-8 to L. 511-14 of the Commercial Code relating to endorsement.

Their right relates to all receivables deriving for the benefit of the credit institution from the contracts entered into or the bills subscribed to make the loans; it also relates to all interest and ancillary charges as well as the guarantees associated with said loans, even if they derive from deeds distinct from the contracts or bills.

Such right is exercised preferentially and with equality of rank by the holders of the capitalisation securities created for the benefit of the institution which handles the rediscounting of the loans granted.

Art. L. 313-39. The contracts referred to in Article L. 313-36, which benefit from the same advantages as the bills for which they are substituted, shall not give rise to a stop order.

Art. L. 313-40. Once the contracts or bills are made available to the rediscounting institution, and while they remain available to it, the credit institution which holds the receivables referred to in Article L. 313-38 shall not, unless otherwise provided for in the agreements referred to in Article L. 313-37, assign said receivables in any form whatsoever.

Art. L. 313-41. The contracts or bills representing the loans must refer to Articles L. 313-36 to L. 313-41, as well as the capitalisation securities, under pain of the bearer being deprived of the right referred to in Article L. 313-38.

### Paragraph 3 Refinancing of mortgages and other secured loans

Art. L. 313-42. The provisions of this paragraph shall apply to the promissory notes issued by credit institutions to refinance long-term receivables used to finance real estate located in France or in another European Economic Area Member State which are guaranteed by:

- a first-ranking mortgage or a charge over real property which provides a guarantee at least equal thereto;
- or a guarantee granted by a credit institution or an insurance company which is not included in the consolidation described in Article L. 233-16 of the Commercial Code which the credit institution issuing the promissory note is subject to.

The units or debt instruments issued by securitisation funds are treated in the same way as the receivables referred to above if at least 90% of the fund's assets consist of receivables of the same type, with the exception of specific units or debt instruments issued to cover the risk of insolvency of the debtors.

With effect from 1 January 2002, receivables represented by promissory notes must comply with the conditions laid down in paragraph I of Article L. 515-14 pursuant to terms determined by a decree issued following consultation with the Conseil d'Etat. Said decree specifies the circumstances in which the quota may be exceeded if the amount of said receivables exceeds that of the promissory notes they guarantee.

Art. L. 313-43. The contracts that constitute said loans and their guarantees, amendments made to the contracts to provide the lender with additional guarantees, and bills signed by the borrower to ensure compliance with his obligations, if such bills

exist, must be made available to the bearer of the promissory note by the credit institution, if the bearer so requests, in a capital amount equal to the capital amount of the promissory note.

The credit institution provides safekeeping for the contracts and bills made available to the bearer of the promissory note by keeping, in a file bearing his name, pursuant to Articles L. 313-42 to L. 313-49, a detailed list of each of the above contracts and bills with an indication of their updated amounts.

Art. L. 313-44. – I. - Barring application of Article L. 313-46, the credit institution recovers, pro tanto, free disposal of the receivables referred to in Article L. 313-43 as and when they become due or redeemable, or when it so chooses. It is required, while the promissory note remains in circulation, to replace the contracts and bills it recovers free disposal of, without discontinuity, with other debt instruments having a capital amount equal to those made available to the bearer of the promissory note as provided for in Article L. 313-43.

II. - The debt instruments made available to the bearer of the promissory note pursuant to paragraph I are substituted as of right, through real subrogation, for the debt instruments which the credit institution recovers free disposal of. Such substitution preserves the rights of the bearer of the promissory note and entails the effects set forth in Article L. 313-45, even if the signing of the new debt instruments made available to said bearer is subsequent to the signing of the promissory note.

Art. L. 313-45. Making receivables and bills available to the bearer of the promissory note automatically entails creation of a pledge in favour of the successive bearers.

The bearer of the promissory note's right encompasses all receivables deriving for the benefit of the credit institution from the contracts and bills which have been made available to said bearer pursuant to this paragraph, without any further formality being required. It also encompasses all interest and ancillary charges, as well as any mortgage securities associated with the loans, even if they derive from deeds distinct from the contracts or bills.

The bearer of the promissory note exercises said right preferentially in relation to the credit institution and, in the event of a single receivable being shared between several bearers of promissory notes, said bearers enjoy equality of rank.

While the receivables and bills remain available to the bearer of the promissory note, the credit institution shall not transfer said receivables or bills in any form whatsoever.

Art. L. 313-46. If the amount of the promissory note or the interest attached to it is not paid when due, and regardless of the remedies he might exercise against the credit institution, the bearer of the promissory note may obtain, upon request and in return for said note, submission of the nominal list of the holders referred to in Article L. 313-43 and also, where applicable, of the bills made available to him pursuant to this paragraph. Such submission transfers title of the receivables to him without any further formality being required, and with the interest, advantages and guarantees attaching thereto, within the limits of the rights he holds on account of the promissory note he held.

Art. L. 313-47. For deletion of a registration, no documentary proof is required to support the statements in the act of discharge which establishes that the instruments were made available or handed over if said statements are certified as accurate in said act. The beneficiaries of such availability or delivery shall not be deemed to be interested parties within the meaning of Article

2440 of the Civil Code if the act of discharge does not refer to the action carried out on their behalf.

Art. L. 313-48. In order to guarantee payment when due of the amount of the promissory note referred to in Article L. 313-42, or the amount of the interest attached to said note, the bearer of said note may ask the credit institution to make contracts available to it which constitute long-term receivables, along with their guarantees, to be added to those already made available pursuant to Article L. 313-43, for an agreed amount, given that said contracts may give rise to the creation of promissory notes having the characteristics of those referred to in Article L. 313-42.

The contracts thus made available to the bearer to guarantee a note referred to in Article L. 313-42 shall be indicated to said bearer at the same time as the availability of the contracts, pursuant to the procedure described in Articles L. 313-43 and L. 313-44.

The effects of said availability by way of guarantee are described in Articles L. 313-45 to L. 313-47.

Articles L. 313-44 to L. 313-46 shall apply notwithstanding any provision to the contrary, including those of Book VI of the Commercial Code. These provisions shall apply to capitalisations effected before 29 June 1999 pursuant to the provisions of this paragraph.

Art. L. 313-49. The Autorité de Contrôle Prudentiel is responsible for ensuring that the credit institutions comply with the provisions of Articles L. 313-42 to L. 313-48.

## Section 4 Surety guarantees

Art. L. 313-50. – I. - A surety guarantee mechanism has been established in order to meet the guarantee commitments made by a credit institution in favour of individuals or private-law legal entities, as required by a law or regulation, in the event of said credit institution becoming insolvent. Credit institutions whose authorisation in France covers the issuing of such guarantees belong to said mechanism.

II. - The deposit guarantee fund administers the surety guarantee mechanism. Articles L. 312-5 to L. 312-15, L. 312-17 and L. 312-18 shall apply to said mechanism. Moreover, the deposit guarantee fund is subrogated in the rights and obligations resulting from the commitments made by the credit institution and met by the fund, within the limits of the amounts actually paid.

III - The surety guarantee mechanism is implemented at the request of the Autorité de Contrôle Prudentiel whenever it establishes that a credit institution is no longer able, immediately or in the near future, to meet the guarantee commitments, as described in paragraph I, that it has made. Where applicable, the surety guarantee mechanism acts jointly with the deposit guarantee fund when the latter is called upon by virtue of the first paragraph of Article L. 312-5.

IV. - As a precaution, and on a proposal from the Autorité de Contrôle Prudentiel, the surety guarantee mechanism may also act, independently or jointly with the deposit guarantee fund, as provided for in Article L. 312-5.

A decree determines the list of compulsory guarantees covered by the surety guarantee mechanism and defines the disclosure requirements for the guarantee provided.

Art. L. 313-51. An order issued by the Minister for the Economy specifies, inter alia:

1. The terms of compensation;

2. The global amount of, and distribution key for, the annual contributions payable to the mechanism by the member institutions, taking due account of objective indicators of the financial situation of each such institution;

3. The circumstances in which a portion of such contributions does not have to be paid to the guarantee subject to appropriate guarantees being put in place.

The contributions made by the affiliated institutions to one of the central bodies referred to in Article L. 511-30 shall be paid directly to the guarantee fund by said central body.

In the circumstances and under the terms set forth in Article L. 313-50 and this article, the surety guarantee mechanism is retroactively liable for the guarantee commitments required by a law or regulation which were made by any credit institution placed in court-ordered reorganisation after 1 January 1996 and which has been unable to fully meet said commitments.

In applying said provisions, the deposit guarantee fund shall assume, once approval has been given by the chairman of its Executive Board, the financial charge of said guarantee commitments on behalf of the surety guarantee mechanism until the first call is made for the contributions allocated to said mechanism. The charge incurred through the intervention of the deposit guarantee fund shall then be applied to the surety guarantee mechanism.

The sums thus paid by the guarantee mechanism confer on the guarantee fund a right to a distribution of dividend which is identical to that of the other unsecured creditors eligible for said dividend.

## CHAPTER IV Payment Services

### Section 1 Definitions

Art. L. 314-1. – I. – A payment account is an account held in the name of one or more persons which is used for carrying out payment transactions.

II. – The following are payment services:

1 Services enabling cash transfers to be made to a payment account and administration of a payment account;

2 Services enabling withdrawals of cash from a payment account and administration of a payment account;

3 Execution of the following payment transactions associated with a payment account:

a) Direct debits, including one-off direct debits;

b) Payment transactions carried out with a payment card or by a similar means;

c) Transfers, including standing orders;

4 Execution of the following payment transactions associated with a line of credit:

a) Direct debits, including one-off direct debits;

b) Payment transactions carried out with a payment card or by a similar means;



c) Transfers, including standing orders;

5 The issuance of payment instruments and/or the acquisition of payment orders;

6 Cash transmission services;

7 The execution of payment transactions where the payer's consent is given by means of any telecommunications, digital or IT device and the payment is sent to the operator of the system or of the telecommunications or IT network acting solely as an intermediary between the user of payment services and the supplier of goods or services.

III. – The following are not payment services:

1 The execution of transactions originating from one of the following documents drawn on the payment service provider in order to make funds available to the recipient:

a) A service voucher on paper;

b) A paper traveller's cheque;

c) A paper postal order, as defined by the Universal Postal Union;

2 The execution of payment transactions associated with an assets and securities service, inter alia those carried out on a passbook account, an account referred to in Part II of Book II, a term deposit account, a securities account referred to in Chapter I of Part 1 of Book II or a cash account specifically associated with it.

IV. – A durable medium is any means that enables the user of payment services to store the information personally addressed to him in a way that facilitates subsequent consultation thereof, identically reproduced, for a period consistent with its purpose.

## Section 2 Scope

Art. L. 314-2. I. - This chapter applies to payment transactions carried out by the payment service providers listed in Book V within the framework of the activities defined in paragraph II of Article L. 314-1.

II. The provisions of this chapter shall apply where the payment service provider of the payee and of the payer are both located in Metropolitan France, the overseas *départements*, Saint Martin, Saint Barthélemy, Mayotte or Saint Pierre and Miquelon and the transaction is carried out in euros.

They shall also apply if either the payee's or the payer's payment service provider is located in Metropolitan France, the overseas *départements*, Saint Martin or Saint Barthélemy and the other is located in Metropolitan France, the overseas *départements*, Saint Martin, Saint Barthélemy or another Member State of the European Community or a State party to the European Economic Area agreement and the transaction is carried out in euros or in the currency of a Member State that is not part of the Eurozone.

Art. L. 314-2. – I. – Paragraph III of Article L. 314-7 applies if just one payment service provider involved in a payment transaction relating to a payment service framework agreement or a deposit account agreement is located in Metropolitan France, the overseas *départements*, Saint Martin, Saint Barthélemy, Mayotte or Saint Pierre and Miquelon.

II. – Paragraph VII of Article L. 314-13 applies if just one payment service provider involved in a payment transaction is located in Metropolitan France, the overseas *départements*, Saint Martin, Saint Barthélemy, Mayotte or Saint Pierre and Miquelon.

Art. L. 314-3. – The stipulations of the deposit account agreements referred to in paragraph I of Article L. 312-1-1 which govern the payment transactions shall be subject to the provisions of this chapter.

Art. L. 314-4. The provisions of this chapter shall not apply to payment transactions carried out between payment service providers for their own account.

Art. L. 314-5. – Save for cases in which the user is an individual acting for non-commercial purposes, some or all of sections 3 and 4 of this chapter may be derogated from, with the exception of paragraph III of Article L. 314-7 and paragraph VII of Article L. 314-13.

Art. L. 314-6. – The provisions of this chapter shall apply without prejudice to the additional prior information requirements provided for in other acts.

## Section 3 Costs associated with the provision of information

Art. L. 314-7. – I. – The provision of the information referred to in this chapter shall not give rise to any costs for the user of payment services.

II. – The payment service provider and its customer may arrange for information additional to that envisaged in this chapter to be provided, or for information to be provided more frequently and by means other than those envisaged in the deposit account agreement or the payment service framework agreement. They may then agree reasonable charges for such additional services, commensurate with the costs actually borne by the payment service provider.

III. – Each year, in January, the individuals and associations are made aware of a separate document that provides a summary of all the monies received by the payment service provider during the previous calendar year in respect of the products or services that said persons availed themselves of in relation to the administration of their payment account or under the payment service framework agreement or a deposit account agreement; in the case of a deposit account, said summary indicates, where applicable, the interest charged in the event of a debit position having arisen. The same summary itemises, for each type of product or service associated with the administration of the payment account or the deposit account, the subtotal of the charges applied and the number of products or services concerned.

These provisions shall become applicable for the first time by credit institutions not having deposit accounts and by payment institutions in January 2011, for the year 2010.

IV. – If the recipient offers the payer a foreign exchange service, it is required to inform it of all the charges applicable and the exchange rate that will be used for conversion of the payment transaction.

## Section 4 Information requirements

Art. L. 314-8. – The information and conditions referred to in this section shall be conveyed in terms and in a form which are clear and easy to understand. They shall be expressed in French unless otherwise agreed between parties.

### Subsection 1 Single payment transactions

Art. L. 314-9. – The provisions of this subsection shall apply to payment transactions which are not covered by a deposit account agreement envisaged in paragraph I of Article L. 312-1-1 or a payment service framework agreement envisaged in subsection 2.

Art. L. 314-10. – Where a payment order relating to a single payment transaction is transmitted via a payment instrument covered by a payment service framework agreement governed by the provisions of subsection 2 or a deposit account agreement governed by the provisions of paragraph I of Article L. 312-1-1, the payment service provider shall not be obliged to provide the user with the information referred to in this subsection or to make it available to him. Such information has already been, or will be, provided to him by his payment service provider under the terms of one or other of the aforementioned agreements.

Art. L. 314-11. – I. – Before the user of payment services is bound by a contract relating to a single payment transaction, the payment service provider makes available to him the information stipulated in an order issued by the Minister for the Economy.

At the user's request, the payment service provider provides such information on paper or another durable medium.

II. – If, at the request of the user of payment services, the contract relating to a single payment transaction is entered into via a remote communication medium which does not allow the payment service provider to meet its obligations under paragraph I, the latter discharges said obligations as soon as possible after execution of the payment transaction.

III. – The payment service provider may discharge the prior information obligation referred to in paragraph I by providing a copy of the draft contract relating to the single payment transaction or the draft payment order bearing the information and conditions stipulated in paragraph I.

IV. – Where applicable, the other relevant information and conditions referred to in Article L. 314-12 shall be made available to the user of payment services in a readily accessible form.

V. – As soon as it receives the payment order, the payment service provider provides, or makes available, to the payer the information stipulated in an order issued by the Minister for the Economy, pursuant to the terms set forth in paragraph I.

### Subsection 2 Payment service framework agreement

Art. L. 314-12. – I. – Where the proposed payment service is linked to a payment account which is not the subject of a deposit account agreement pursuant to paragraph I of Article L. 312-1-1 or of a specific payment instrument, a payment service framework agreement making reference to the information and conditions stipulated in paragraph II must be entered into.

II. – The payment service framework agreement includes the information and conditions relating to the payment service

provider, the use of a payment service, the charges, the interest rates and exchange rates, the communications between the user and the payment service provider, the protection measures and corrective measures, as well as amendment and cancellation of the framework agreement and the available remedies.

This article's implementing provisions are set forth in an order issued by the Minister for the Economy.

Art. L. 314-13. – I. – Before the user of payment services is bound by a framework agreement or an offer of payment services, the payment service provider provides him, on paper or another durable medium, with the information and conditions referred to in Article L. 314-12. The payment service provider may discharge this obligation by providing the user with a copy of the draft framework agreement.

If, at the customer's request, the framework agreement is entered into via a remote communication medium which does not allow the payment institution to meet its obligations under the previous paragraph, the latter discharges said obligations as soon as possible after the payment service framework agreement is entered into.

II. – Where an account described in Article L. 522-4 is opened, the acceptance of the payment service framework agreement is formalised by the signature of the accountholder(s).

III. – Any proposal to amend the payment service framework agreement is sent to the customer on paper or another durable medium not later than two months before the scheduled inception date thereof.

Pursuant to the terms set forth in the payment service framework agreement, the payment service provider shall inform the customer that he shall be deemed to have accepted the amendment if he does not inform it of his non-acceptance thereof before said amendment's proposed date of entry into force; in the latter case, the payment service provider also explains that, if the customer declines the proposed amendment, it may cancel the framework agreement without charge before the amendment's proposed date of entry into force.

IV. – The customer may cancel the payment service framework agreement at any time, barring any contractually stipulated notice period, such being limited to thirty days.

After twelve months, the payment service framework agreement may be cancelled without charge.

In other cases, the cancellation charge must be proportionate to the costs incurred through such cancellation.

The payment service provider may cancel an open-ended payment service framework agreement after giving at least two months' notice. Charges correctly applied for the provision of payment services shall be payable by the customer only in proportion to the period elapsed as of the date of cancellation of the payment service framework agreement. If they were paid in advance, such charges shall be reimbursed pro rata.

V. – At any time during the contractual relationship, the payment service provider shall provide the terms of the payment service framework agreement on paper or another durable medium, if the user so requests.

The payment service provider shall not refuse to provide the customer with a payment service framework agreement drawn up on paper.

VI. – For each payment transaction referred to in Article L. 314-2 made under a payment service framework agreement and ordered by the payer, the payment service provider provides him, at his request, with information concerning the maximum turnaround time for that specific transaction, the charges he must pay and, where appropriate, a breakdown of said charges.

VII. – Payment institutions shall be required to inform their customers and the public of the general conditions and charges applicable to transactions relating to the administration of an account referred to in Article L. 522-4, as determined by order of the Minister for the Economy.

### Subsection 3 Information provided after execution of a payment transaction

Art. L. 314-14. – I. – After the execution of a single payment transaction or one carried out under a payment service framework agreement or the stipulations of a deposit account agreement referred to in paragraph I of Article L. 312-1-1, the payment service provider shall promptly provide the user with information relating to said transaction on paper or another durable medium, as stipulated by the regulations.

II. – For payment transactions executed under a payment service framework agreement or the stipulations of a deposit account agreement referred to in paragraph I of Article L. 312-1-1, the parties may nevertheless contractually decide that such information shall be provided or made available at intervals that shall not exceed one month, without prejudice to the provisions of paragraph II of Article L. 314-7.

The payment service provider shall not refuse to provide the information referred to in paragraph I of this article, on paper and free of charge, at least once a month, without prejudice to the provisions of paragraph II of Article L. 314-7.

### Subsection 4 Information requirements when a payment service provider involved in the transaction is located in Saint Pierre and Miquelon or Mayotte or outside the European Economic Area

Art. L. 314-15. – An order issued by the Minister for the Economy stipulates the information to be provided to an individual acting for non-commercial purposes if his payment service provider is located in Saint-Pierre and Miquelon or Mayotte and the other payment service provider involved in the transaction is located outside France, regardless of the currency used for the payment transaction.

An order issued by the Minister for the Economy stipulates the information to be provided to an individual acting for non-commercial purposes if his payment service provider is located in Metropolitan France, the overseas *départements*, Saint Martin or Saint Barthélemy and the other payment service provider involved in the transaction is located in a State which is not party to the European Economic Area Agreement, regardless of the currency used for the payment transaction.

### Subsection 5 Requirements applicable to instruments limited to the payment of small amounts

Art. L. 314-16. – I. – Where the payment transaction is executed via an instrument referred to in Article L. 133-28, the payment service provider may only provide the payer with information on the main features of the payment service, including the way in which the payment instrument may be used, the liability, the charges applied and other concrete information

required to make a decision in full knowledge of the facts, as well as an indication of the place where the other information and conditions referred to in Article L. 314-13 are readily accessible.

II. – The payment service provider shall not be required to propose an amendment to the terms of the payment service framework agreement on paper or another durable medium in respect of an instrument referred to in Article L. 133-28.

III. – After execution of a payment transaction with an instrument referred to in Article L. 133-28, the payment service provider may only provide or make available a reference which enables the user of payment services to identify the payment transaction, the amount thereof and the charges. In the event of multiple payment transactions of the same type for the same recipient, it may only provide or make available to the user information concerning the total amount of said payment transactions and the charges applied.

However, the payment service provider shall not be bound by this obligation if the payment instrument is used anonymously or if the payment service provider is, moreover, technically unable to provide it. It then enables the payer to verify the amount of the funds held.

## CHAPTER V Mediation

Art. L. 315-1. – All credit institutions and payment institutions appoint one or more mediators to recommend solutions to disputes with individuals acting for non-commercial purposes in relation to the services provided and the execution of contracts entered into within the framework of this Part and Part II of this book and relating to the products referred to in Parts I and II of Book II. The mediators are chosen on account of their competence and impartiality.

The mediator is required to give a ruling within two months of being called upon to do so. Referral to the mediator suspends limitation pursuant to the conditions of Article 2238 of the Civil Code. The findings and declarations gathered by the mediator cannot be produced or invoked subsequently in the procedure without the consent of the parties. Said mediation procedure is free. The existence of mediation and its mode of access must be the subject of a reference written on the deposit account agreement referred to in paragraph I of Article L. 312-1-1, the payment service framework agreement referred to in Article L. 314-12 and, where applicable, the statements of account.

The annual activity report drawn up by each mediator is sent to the Governor of the Banque de France and the chairman of the Comité consultatif instituted by Article L. 614-1.

## CHAPTER VI Supervision and common provisions

Art. L. 316-1. – Officials of the Banque de France commissioned by the Minister for the Economy, and officials authorised to establish the existence of violations of the provisions of Articles L. 113-3, L. 121-35 and L. 122-1 of the Consumer Code, are empowered, in the performance of their duties, to seek to uncover violations of the provisions of Articles L. 312-1-1, L. 312-1-2, L. 314-12 and L. 314-13 of this code and record them in a statement of offence.

The authorised officials referred to in the first paragraph are empowered to seek and record violations of the provisions of Articles L. 112-11 and L. 112-12.

The authorised officials referred to in the first paragraph are also empowered to seek and record violations of the provisions of Articles L. 312-1-1, L. 312-1-2, L. 314-12 and L. 314-13 committed by branches of payment service providers having their registered office or their principal place of business in another Member State of the European Community or another State party to the European Economic Area Agreement established in Metropolitan France, the overseas *départements*, Saint Barthélemy or Saint Martin.

Said officials may enter any premises used for business purposes and request sight of the books and all other business documents and make copies thereof. They may either gather information and proof in situ or summon the party concerned to a meeting. They may enter the premises only between the hours of 8.00 a.m. and 8.00 p.m. In the event of the person responsible for the premises objecting thereto, the search can take place only if it is authorised by the Public Prosecutor attached to the Regional Court (Tribunal de grande instance) of the place where the premises are located. Professional secrecy cannot be invoked against officials acting under the powers conferred on them by this article.

Statements of offence for violations giving rise to a criminal prosecution are sent to the Public Prosecutor within five days of being drawn up. In all cases, a copy of the statement of offence is delivered to the person charged.

Art. L. 316-2. – It is incumbent on the payment service provider to show that it has met the information requirements stipulated in Chapters II and IV of this Part.

Art. L. 316-3. – The provisions of paragraph I of Article L. 312-1-1 and Articles L. 312-1-2 and L. 315-1 shall apply to the payment service providers referred to in Article L. 521-1, as well as the institutions and services referred to in Article L. 518-1. They are mandatory.

Their terms of implementation are stipulated in a decree issued following consultation with the Conseil d'Etat.

The credit institutions shall inform their customers of the conditions under which the deposit account agreement may be entered into.

## Part II INVESTMENT SERVICES AND ASSOCIATED SERVICES

### Chapter I General Provisions

Art. L. 321-1. Investment services relate to the financial instruments enumerated in Article L. 211-1 and include the following services and activities:

1. Receipt and transmission of orders on behalf of third parties;
2. Execution of orders on behalf of third parties;

3. Own-account trading;

4. Portfolio management on behalf of third parties;

5. Investment advice;

6.1. Underwriting;

6-2. Guaranteed investment;

7. Non-guaranteed investment;

8. Operation of a multilateral trading facility within the meaning of Article L. 424-1.

Definitions of said services are provided in a decree.

Services rendered to the State and to the Banque de France within the framework of the currency, exchange-rate, public-debt and State reserves management policies are not subject to the provisions of this Code that apply to investment services referred to in this article.

Art. L. 321-2. Services related to investment services include:

1. Custody account keeping or the administration of financial instruments for third parties and ancillary services such as cash-account management relating to such financial instruments or the management of financial guarantees;

2. The granting of credits or loans to an investor to enable him to carry out a transaction relating to a financial instrument in which the company granting the credit or the loan participates;

3. Consultancy services provided to firms in relation to capital structure, industrial strategy and related subjects, as well as consultancy services relating to mergers and acquisitions;

4. Investment research and financial analysis or any other kind of general recommendation concerning transactions on financial instruments;

5. Services associated with underwriting;

6. Exchange-rate services when they are associated with the provision of investment services;

7. Services and activities which are similar to investment services or associated services relating to the underlying elements of financial futures, a list of which is determined by decree, where they are linked to the provision of investment services or associated services.

**8. The credit rating service referred to in points a and o of paragraph 1 of Article 3 of Regulation (EC) No. 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies.**

Art. L. 321-3. The services enumerated in Articles L. 321-1 and L. 321-2 are provided pursuant to the terms and conditions indicated in Books V and VI.

### CHAPTER II Investors' Guarantee

Art. L. 322-1. With the exception of portfolio management companies, financial services providers approved in France and intermediaries authorised by the Autorité de Contrôle Prudentiel to provide clearing services or custody and administration services for financial instruments belong to a securities guarantee mechanism. The object of said mechanism is to compensate investors in the event of their financial instruments or their cash deposits being unavailable where they are linked to an investment service, to clearing or custody of financial instruments and falling



outside the scope of the deposit guarantee fund instituted by Article L. 312-4. Persons and Funds excluded from compensation by Article L. 312-4 cannot benefit from the guarantee mechanism.

Art. L. 322-2. Without prejudice to the provisions set forth hereunder, the deposit guarantee fund administers the securities guarantee mechanism. Articles L. 312-5 to L. 312-15, L. 312-17 and L. 312-18 shall apply to said mechanism. For the purposes of the first paragraph of Article L. 312-5, the securities guarantee mechanism is activated at the request of the Autorité de Contrôle Prudentiel after consultation with the Autorité des Marchés Financiers as soon as the latter authority establishes that an institution referred to in Article L. 322-1 is no longer able to return, immediately or in the near future, the financial instruments or deposits it has received from the public pursuant to the laws and regulations or contractual conditions applicable to their return. The guarantee fund's intervention gives rise to the exclusion of said member. For the persons referred to in Article L. 532-18 and Articles L. 511-22 and L. 511-23, such exclusion shall be deemed to constitute a prohibition on said member continuing to provide its services in France.

On a proposal from the Autorité de Contrôle Prudentiel, and after consultation with the Autorité des Marchés Financiers, the securities guarantee mechanism may also take precautionary measures where a member's situation gives grounds for fearing that the deposits or financial instruments it has received from the public might be unavailable on their due date, given the level of support it enjoys. Where the guarantee fund agrees to implement the mechanism on a precautionary basis, it shall consult the Autorité de Contrôle Prudentiel and the Autorité des Marchés Financiers before determining its *modus operandi*. It may, *inter alia*, make it subject to the total or partial sale of the company concerned or the cessation of its business, particularly through the sale of its assets. It may also acquire the shares of a member institution.

Art. L. 322-3. An order issued by the Minister for the Economy after consultation with the Autorité des Marchés Financiers determines:

1. The ceiling for compensation per investor, the terms and conditions and time limits applicable to compensation, and the rules relating to the provision of information to customers;
2. The particulars of the membership certificates, and the terms and conditions of their yield and redemption in the event of withdrawal of authorisation, after application, where applicable, of any losses incurred by the mechanism;
3. The global amount of, and distribution key for, the annual contributions payable by the institutions referred to in Article L. 322-1, the basis for which consists of the value of the deposits and financial instruments covered by the guarantee pursuant to Article L. 322-1 weighted by the contributions already paid and by indicators of the financial situation of each of the institutions concerned, reflecting the objective risks to which said member exposes the fund;
4. The circumstances in which it shall not be necessary for a portion of such contributions to be paid to the guarantee fund subject to appropriate guarantees being put in place;

The contributions made by the affiliated institutions to one of the central bodies referred to in Article L. 511-30 are paid directly to the guarantee fund by said central body.

Art. L. 322-4. Two members representing the members of the securities guarantee mechanism which are not credit institutions participate with speaking and voting rights in the meetings of the deposit guarantee fund's supervisory board, except when said board takes decisions concerning the guaranteeing of deposits. In this latter case, the financial contributions used to count the votes pursuant to Article L. 312-11 are those that are called under Article L. 322-3. The order issued by the Minister for the

Economy referred to in Article L. 322-3 determines the terms and conditions of appointment of said two representatives and the term of their remit.

The two representatives referred to in the previous paragraph are subject to the incapacities referred to in Article L. 500-1.

Art. L. 322-5. – The portfolio management companies referred to in Article L. 532-9 which provide the investment services referred to in Article L. 321-1 or enter the units or shares of the collective investment undertakings that they manage in their books in registered form join a guarantee mechanism distinct from the one referred to in Article L. 322-1.

Said mechanism exists to compensate investors in the event of financial instruments or cash deposits held in violation of Article L. 533-21 being unavailable, in regard to the activities referred to in the first paragraph, under conditions and within limits laid down in the order referred to in Article L. 322-9.

Persons excluded from compensation by Article L. 312-4 shall not have the benefit of this mechanism.

Art. L. 322-6. – Subject to the provisions of Articles L. 322-7 to L. 322-10, the deposit guarantee fund manages the investors' guarantee mechanism instituted by Article L. 322-5. Articles L. 312-5, L. 312-6, L. 312-9 to L. 312-15, L. 312-17 and L. 312-18 shall apply to said mechanism. For the purposes of these articles, the Autorité des Marchés Financiers is substituted for the Autorité de Contrôle Prudentiel and the portfolio management companies are substituted for the credit institutions or the investment firms.

Art. L. 322-7. – The portfolio management companies belonging to the guarantee mechanism referred to in Article L. 322-5 provide it with the financial resources needed to carry out its tasks. The guarantee fund may, moreover, issue non-tradable membership certificates in registered form which the portfolio management companies that are members subscribe to when they join. Subject to the provisions below, paragraphs II and IV of Article L. 312-7 shall apply to said mechanism. Such membership certificates are redeemable only in the event of the member's approval being withdrawn.

Art. L. 322-8. Any member which fails to pay its contribution to the guarantee fund when requested to do so is subject to the penalties stipulated in Article L. 621-15, as well as late-payment penalties paid directly to the guarantee fund pursuant to the terms and conditions laid down in said fund's rules and regulations.

Art. L. 322-9. An order issued by the Minister for the Economy after consultation with the Autorité des Marchés Financiers determines:

1. The ceiling for compensation, the terms and conditions and time limits applicable to compensation and the rules relating to the provision of information to customers;
2. The particulars of the membership certificates and the terms and conditions of their yield and redemption in the event of their subscriber's approval being withdrawn, after deduction, where applicable, of any losses incurred by the fund;
3. The global amount of, and distribution key for, the annual contributions payable to the mechanism by the members, which include a fixed portion and a variable portion. The variable portion is calculated on the basis of the value of the assets under management and the units or shares of collective investment undertakings entered in the books in registered form which are

covered by the guarantee pursuant to the first paragraph of Article L. 322-5. It is weighted on the basis of the contributions already paid as well as the financial situation indicators of each of the portfolio management companies concerned;

4. The circumstances in which it shall not be necessary for a portion of such contributions to be paid to the guarantee fund subject to appropriate guarantees being put in place;

5. The amount of the minimum contribution of each of the portfolio management companies belonging to the guarantee mechanism referred to in Article L. 322-5.

Art. L. 322-10. – A member representing the members of the guarantee mechanism referred to in Article L. 322-5 participates with right of discussion and vote in the meetings of the deposit guarantee fund's Supervisory Board, except when said board takes decisions regarding the guaranteeing of deposits, the investors' guarantee referred to in Article L. 322-1 or surety guarantees. In this latter case, the financial contributions used to count the votes pursuant to Article L. 312-11 are those that are called under Article L. 322-7. The order issued by the Minister for the Economy referred to in Article L. 322-9 determines the terms and conditions of appointment of the aforementioned representative and the term of his remit.

Said representative is subject to the incapacities referred to in Article L. 500-1.

## PART III PAYMENT SYSTEMS AND SYSTEMS USED FOR SETTLEMENT AND DELIVERY OF FINANCIAL INSTRUMENTS

Art. L. 330-1. – I. – An interbank settlement system or system used for settlement and delivery of financial instruments consists of a national or international procedure which organises relations between at least two parties to facilitate regular execution of payments, through clearing or otherwise, and, for systems used for settlement and delivery of financial instruments, the delivery of securities between said participants.

The system must either have been instituted by a public authority or be governed by a framework agreement that respects the general principles of a market framework agreement or a model agreement. The Minister for the Economy sends the European Commission a list of the systems having the benefit of Articles L. 330-1 and L. 330-2.

II. – Only the following may be members of an interbank settlement system or a system used for settlement and delivery of financial instruments:

1 Credit institutions and investment firms having their registered office or, failing that, their effective management, in a Member State of the European Community or another State party to the European Economic Area Agreement;

2 Institutions or companies referred to in Article L. 518-1;

3 Members of a clearing house referred to in Article L. 440-2;

4 Central securities depositaries

5 Managers of systems used for settlement and delivery of financial instruments;

6 Under the conditions laid down in the General Regulation of the Autorité des Marchés Financiers, credit institutions and investment firms other than those referred to in paragraph 1, and likewise other non-resident legal entities having an activity similar to that of the persons referred to in paragraphs 2 to 5 which are subject, in their State of origin, to rules governing access to said activity and its practice and supervision equivalent to those applicable in France.

Access by credit institutions and investment firms having their registered office or, failing that, their effective management, in another Member State of the European Community or another State party to the European Economic Area Agreement is subject to the same non-discriminatory, transparent and objective criteria that apply to participants having their registered office in France.

A system used for settlement and delivery of financial instruments may, for legitimate commercial reasons, deny access to a credit institution or an investment firm having its registered office or, failing that, its effective management, in another Member State of the European Community or another State party to the European Economic Area Agreement.

Where a safeguard procedure or court-ordered reorganisation or liquidation proceedings is instituted against a participant in an interbank settlement system or a system used for settlement and delivery of financial instruments of the European Economic Area, the rights and obligations deriving from, or linked to, its participation in said system are determined by the law which governs the system, provided that such law is that of a State party to the European Economic Area Agreement.

III - Notwithstanding any statutory provision to the contrary, payments and deliveries of financial instruments made within the framework of interbank payment systems or systems used for settlement and delivery of financial instruments cannot be cancelled in the event of an order to commence court-ordered reorganisation or liquidation proceedings being made against an institution participating directly or indirectly in such a system until the close of the day on which said order is made, even on the grounds of such an order being made.

IV - These provisions shall also apply to payment instructions and delivery instructions for financial instruments, once they have acquired irrevocable status in one of the systems referred to in paragraph II. The time and conditions that determine whether an instruction is considered irrevocable in a system are defined by said system's operating rules.

Art. L. 330-2. – I. – The operating rules, framework agreement or model agreement governing any system referred to in Article L. 330-1 may, where they organise the relations between more than two parties, require that institutions participating directly or indirectly in such systems furnish guarantees which are established and enforceable as provided for in Article L. 211-38 or make a special allocation of securities, certificates, bills, receivables or sums of money to meet the payment obligations deriving from participation in such a system.

II. – The operating rules, framework agreement or model agreement stipulate the arrangements for the establishment, allocation, enforcement or use of the property or rights provided by way of guarantee.

III. – The provisions of Book VI of the Commercial Code or the equivalent provisions governing any judicial or amicable proceedings instituted outside France and any civil enforcement proceedings or exercise of a right to object do not impede application (of this Part) [Articles L. 330-1 and L. 330-2].

No creditor of an institution participating directly or indirectly in such a system or, where applicable, of the system itself, may avail itself/himself of any right whatsoever over said guarantees, even on the basis of the aforementioned provisions.

IV. - Where financial instruments, bills, receivables, sums of money or any similar instrument issued on the basis of a foreign legal system are recorded in a register, an account or with a central securities depository or a central depository system governed by a foreign legal system located in a State party to the European Economic Area Agreement and are provided or used as a guarantee to meet payment obligations deriving from participation in an interbank settlement system or a system used for settlement and delivery of financial instruments, as described in Article L. 330-1, the rights of the recipient of said guarantee shall be determined by the law applicable at the place of said registration. Amended

Art. L. 330-3. – A payment system is an interbank settlement system as described in Article L. 330-1 or any other system which alternately or cumulatively facilitates the processing of payment orders or the transfer of funds in accordance with standardised procedures and common rules.

Art. L. 330-4. – I. – The rules governing the payment service providers' access to the payment systems referred to in Article L. 330-3 must be objective, non-discriminatory and proportionate.

Said rules must allow the prevention of specific risks such as settlement risk, operational risk and corporate risk, as well as protection of the financial and operational stability of the payment systems. They must not impede access to the payment systems beyond what is necessary to meet such requirements.

A payment system shall not impose any of the following requirements on payment service providers, users of payment services or other payment systems:

- a) Rules which restrict their participation in other payment systems;
- b) Rules which establish discrimination between payment service providers in regard to the participants' rights, obligations and advantages;
- c) Restrictions based on their legal form.

II. – The provisions referred to in paragraph I shall not apply to:

- a) The interbank settlement systems described in Article L. 330-1;
- b) Payment systems consisting solely of payment service providers having direct or indirect capital links which confer on one of them effective control of the others;
- c) Payment systems managed by a single payment service provider in the form of a single entity, or of entities belonging to the same group, which acts or may act as a payment service provider for both the payer and the recipient, which has sole responsibility for the management of the system and which allows other payment service providers to participate in the system, without the latter being able to negotiate commissions between themselves. Payment service providers participating in such systems may nevertheless determine their own charges in regard to the payers and the recipients.

## PART IV DIRECT MARKETING, CANVASSING AND DISTANCE PROVISION OF FINANCIAL SERVICES

### CHAPTER I Direct marketing of banking services or other financial services

#### Section 1 Definition

Art. L. 341-1. Any unsolicited contact made, through whatever means, with a given individual or legal entity with a view to obtaining agreement as indicated below constitutes an act of direct marketing of banking services or other financial services:

1. Execution by a person referred to in paragraphs 1 or 4 of Article L. 341-3 of a transaction on a financial instrument enumerated in Article L. 211-1;
2. Execution by a person referred to in paragraph 1 or 4 of Article L. 341-3 of a banking transaction or a related transaction described in Articles L. 311-1 and L. 311-2;
3. Provision by a person referred to in paragraph 1 of Article L. 341-3 of an investment service or a related service described in Articles L. 321-1 and L. 321-2;
4. Execution of a transaction on miscellaneous property referred to in Article L. 550-1;
5. Provision by a person referred to in paragraph 3 of Article L. 341-3 of an investment consultancy service referred to in paragraph I of Article L. 541-1.
6. Provision by a person referred to in paragraph 1 of Article L. 341-3 of a payment service referred to in paragraph II of Article L. 314-1.

The fact of physically calling on persons for the same purposes at their domicile, their place of work or a place not intended for the marketing of financial products, instruments and services also constitutes an act of direct marketing of banking services or other financial services, whoever initiates the approach.

Direct marketing of banking services or other financial services is conducted without prejudice to application of the specific provisions relating to the provision of investment services, the carrying out of banking transactions and payment services and the execution of transactions relating to miscellaneous property, as well as the provisions of Article 66-4 of Act No. 71-1130 of 31 December 1971 reforming certain judicial and legal professions.

Art. L. 341-2. The rules concerning the direct marketing of banking services or other financial services shall not apply:

1. To contacts made with qualified investors as defined in Article L. 411-2 and with legal entities whose balance-sheet total, turnover, volume of assets under management, income or staff are above a threshold set by decree;
2. To contacts made on the premises of the persons referred to in Article L. 341-3, unless said persons are contractually bound, in regard to the marketing of financial instruments and savings products, to companies operating superstores of the types referred to in Article L. 752-1 of the Commercial Code and

Article 30-2 of the Cinema Industry Code, when their premises are located on the premises of such stores;

3. To approaches made on the business premises of a legal entity at said person's request;

4. To contacts made with legal entities, where they relate exclusively to the services referred to in paragraph 4 of Article L.321-2;

5. Where the person approached is already a customer of the person on behalf of whom the contact is made, provided that the proposed transaction, in terms of its characteristics and the risks or amounts involved, is similar to the transactions usually carried out by said person;

6. To approaches made on behalf of a credit institution with a view to proposing a financing contract for goods or services which meets the conditions laid down in Section 9 of Chapter I of Part I of Book III of the Consumer Code, or a hire purchase contract or a lease with option to purchase referred to in Article L. 311-2 of said Code. The same applies where such contracts are specifically geared to the requirements of a business activity;

7. Without prejudice to the provisions of paragraph 6 above, to approaches made on behalf of a credit institution with a view to proposing financing for hire purchase agreements for individuals or legal entities, other than those referred to in paragraph 1, on condition that the name of the credit institution and the cost of the credit or lease are indicated, failing which they shall be null and void;

8. To approaches made at the place of sale, on behalf of a credit institution or a payment institution, with a view to offering loans as indicated in Part I of Book III of the Consumer Code.

9 To agreements entered into between the persons referred to 1 of Article L. 341-3, with the exception of venture capital companies, for the distribution of products, the execution of transactions or the provision of a service referred to in Article L. 341-1, save for the provisions referred to in Article L. 341-6.

10 To approaches made on behalf of a payment institution with a view to offering a financing contract for goods or services which meets the conditions laid down in Section 5 of Chapter I of Part I of Book III of the Consumer Code.

## Section 2 Persons authorised to engage in direct marketing

Art. L. 341-3. Only the following legal entities and individuals shall be permitted to commission or undertake direct marketing of banking services or other financial services, within the scope of the specific provisions which govern them:

1 The credit institutions defined in Article L. 511-1, the institutions referred to in Article L. 518-1, the payment institutions, the investment firms and the insurance companies indicated respectively in Article L. 531-4 of this code and Article L. 310-1 of the Insurance Code, the venture capital companies referred to in Article 1-1 of Act No. 85-695 of 11 July 1985 containing various provisions of an economic and financial nature, in relation to subscriptions to the securities they issue, the **fund management companies referred to in Article L. 543-1 of this code in relation to subscriptions to the financial securities issued by the collective investment undertakings that they manage**, as well as the equivalent institutions and firms approved in another Member State of the European Community and authorised to trade in France;

2. Firms, in the context of the schemes governed by Book III of the Labour Code which they offer to the beneficiaries, as well

as the legal entities they commission to offer such schemes negotiated by the firm. In such cases, and without prejudice to the rules of disclosure and marketing which they are subject to, only the provisions of Articles L. 341-9 and L. 353-4 of this Code shall apply to such direct marketing activities;

3 The financial investment advisors described in Article L. 541-1.

4 The intermediaries offering banking transactions and payment services referred to in Article L. 519-1;

5 The tied agents referred to in Article L. 545-1.

Art. L. 341-4. – I. - The entities referred to in Article L. 341-3 may commission individuals to carry out direct marketing of banking services or other financial services on their behalf. The companies and firms or institutions referred to in paragraph 1 of said article may also commission legal entities for said purpose, in which case they themselves may, in turn, commission individuals to carry out said activity on their behalf.

II. - In all cases, the appointments shall be made by name. The remit shall indicate the nature of the products and services to which it relates and the circumstances in which the direct marketing activity may be carried out. Its term shall be limited to two years and it may be renewed.

**The direct marketer shall engage in the direct marketing of banking services or other financial services solely on behalf of his principal and for the services, transactions and products in respect of which the latter is approved.**

A single individual or legal entity may accept remits from several companies, institutions or firms within the meaning of paragraph 1 of Article L. 341-3, in such cases said person shall inform all the principals of the remits thus held.

III. - The persons referred to in Article L. 341-3 and those commissioned pursuant to paragraph I of this article are legally liable for the actions of the direct marketers, acting in said capacity, whom they have appointed. The legal entities referred to in Article L. 341-3 remain liable for the actions of the employees or the legal entities they have appointed, within the scope of their remit.

IV. - Individuals who are direct marketers and those empowered to manage or administer legal entities commissioned pursuant to paragraph I must meet conditions determined by decree regarding their age, respectability and professional competence. The same applies to employees of the persons referred to in Article L. 341-3 where they carry out direct marketing activities, and those of individuals or legal entities commissioned pursuant to paragraph I of this article.

V. - The rules laid down in paragraphs II and IV shall not apply to individuals participating in the sending of documents to named individuals, provided that they have no personalised contact which would enable them to influence the choice of the person solicited. In the latter case, the legal entities referred to in Article L. 341-3 or commissioned pursuant to paragraph I shall be deemed to be directly performing the direct marketing activity and shall be required to apply the relevant rules.

Art. L. 341-5. Any individual or legal entity commissioned to perform the direct marketing of banking services or other financial services must be able, at all times, to prove the existence of an insurance policy covering him against the financial consequences of his professional civil liability in the event of any breach of his professional obligations as indicated in this Chapter.

The minimum level of the cover which must be provided by the professional civil liability insurance is determined by decree consistent with the circumstances in which the activity is carried out, with particular reference to the number of remits in force and the products and services that are promoted via direct marketing.



Art. L. 341-6. The entities referred to in Article L. 341-3, according to their category, shall arrange registration of the following direct marketers with the Autorité des Marchés Financiers and the Autorité de Contrôle Prudentiel :

1 Employees to whom they entrust the direct marketing of banking services or other financial services on their behalf;

2 Individuals or legal entities to whom they entrust the direct marketing of banking services or other financial services on their behalf as representatives, as well as their employees;

3 Individuals authorised for said purpose by legal entities authorised as described in paragraph 2, as well as their employees;

4 Their legal representative or their managers, as well as those of the individuals or legal entities referred to in paragraphs 2 and 3, where such persons engage in or commission the direct marketing of banking services or other financial services.

Institutions or firms authorised in another Member State of the European Community or a State party to the European Economic Area Agreement which are authorised to trade in France arrange registration, in the same way, for the persons referred to in the second to fifth paragraphs, with the authority in France which has received from the authority of their home State responsible for supervising those same institutions and firms the declaration of their intention to conduct business in France for their activities covered by mutual recognition of authorisations.

Where a financial investment advisor, as defined in Article L. 541-1, commissions individuals to carry out direct marketing relating exclusively to the transactions envisaged in paragraph 5 of Article L. 341-1, such persons shall be registered, on behalf of the financial investment advisor, with the association approved by the Autorité des Marchés Financiers pursuant to Article L. 541-4 to which said advisor belongs.

The individuals and entities referred to in paragraph 1 of Article L. 341-3 may use the services of another person referred to in that same article to arrange registration of the direct marketers they commission.

The legal entities referred to in paragraph 1 of Article L. 341-3 are not subject to the provisions of the previous paragraphs in respect of their employees who do not carry out any direct marketing activity which involves the physical presence of the direct marketer at the domicile of the persons solicited, at their place of work or at a place not intended for the marketing of financial products, instruments and services. When so requested by the persons solicited, such legal entities must at all times be able to prove that the persons who carry out direct marketing activities on their behalf are their employees.

Where an individual who is employed or commissioned carries out direct marketing activities for several legal entities within the meaning of Article L. 341-3, each legal entity involved is required to arrange registration of said individual with the authorities referred to in the first paragraph.

The authority required to effect registration as determined in the first to eighth paragraphs and the tenth paragraph allocates a registration number to each direct marketer. Said registration number must be given by the direct marketer to all persons solicited and must be shown on all documents distributed by direct marketers.

The legal entities referred to in Article L. 341-3 and persons commissioned pursuant to paragraph I of Article L. 341-4 shall be required to ensure that all employees or commissioned persons whom they authorise to carry out direct marketing activities for banking services or other financial services on their behalf, on the basis of the information they provide, meet the conditions laid down in Article L. 341-9 and, in the case of commissioned persons, Articles L. 341-4 and L. 341-5.

Persons having obtained registration for the persons referred to in the second to fifth paragraphs must inform the authority

they were registered with if the persons registered no longer meet the conditions of registration.

Art. L. 341-7. - A file of the persons authorised to carry out the direct marketing of banking services or other financial services is held jointly by the Autorité des Marchés Financiers and the Autorité de Contrôle Prudentiel as determined by decree after consultation with the [Commission Nationale de l'Informatique et des Libertés](#). It is freely available for public consultation.

**Art. L. 341-7-1. – The file referred to in Article L. 341-7 also records the tied agents referred to in Article L. 545-1.)**

Art. L. 341-8. Any person who, when carrying out the direct marketing of banking services or other financial services, is physically present at the domicile of the persons solicited, at their place of work or at a place not intended for the marketing of financial products, instruments and services must be the holder of an professional licence issued by the entity for whom he is acting and based on a model determined by order of the Minister for the Economy.

Said licence must be presented to all persons thus solicited.

Art. L. 341-9. Persons carrying out the direct marketing of banking services or other financial services are subject to the incapacities referred to in Article L. 500-1.

### Section 3 Products in respect of which direct marketing is prohibited

Art. L. 341-10. Without prejudice to the specific rules applicable to the direct marketing of certain products, the following products cannot be the subject of direct marketing:

1. Products whose maximum risk is not known at the time of subscription or whose risk of loss is greater than the amount of the initial financial contribution, with the exception of:

- units of real-property investment partnerships. When two years have elapsed since the enactment of Act No. 2003-706 of 1 August 2003 relating to financial security, only the units of real-property investment partnerships whose company constitutional documents provide for limitation of each partner's liability to the amount of his share in the capital may be directly marketed;

- products which form part of a normal hedging operation, provided that such products are only offered to legal entities;

2. Products in respect of which marketing in France is not authorised pursuant to Article L. 151-2;

3. Products that come within the scope of Articles L. 214-42 and L. 214-43;

4. Financial instruments which are not admitted to trading on the regulated markets described in Articles L. 421-4 and L. 422-1 or on the recognised foreign markets indicated in Article L. 423-1, with the exception of the units or shares of collective investment undertakings, financial instruments offered to the public after an information document has been drawn up as provided for in Part I of Book IV of this Code, securities issued by the venture capital companies referred to in Article 1-1 of the aforementioned Act No. 85-695 of 11 July 1985 and products offered under a scheme governed by Book III of the third part of the Labour Code.

### Section 4 Conduct of business rules

Art. L. 341-11. Before offering financial instruments, an investment service or related services, direct marketers must inquire about the financial situation of the person solicited and

his experience and objectives in terms of investment or financing. These provisions shall not apply to the sending of documents carried out as provided for in paragraph V of Article L. 341-4, without prejudice to compliance with the duty of disclosure and advice owed to subscribers and customers pursuant to Articles L. 214-12, L. 214-83-1 and L. 533-11 to L. 533-16.

Direct marketers provide the person solicited with clear and understandable information to enable him to make his decision.

Art. L. 341-12. In good time, and before he is contractually bound, the person solicited receives information as stipulated in a decree issued following consultation with the Conseil d'Etat which includes the following:

1 **The name and business address** of the individual engaged in direct marketing;

2 **The name, address and, where applicable, the registration number referred to in Article L. 546-1**, of the legal entity(ies) on whose behalf the direct marketing is carried out;

3 **The name, address and, where applicable, the registration number referred to in Article L. 546-1** of the legal entity commissioned pursuant to paragraph I of Article L. 341-4, if the direct marketing is carried out on behalf of such a person;

4. The specific information sheets relating to the products, financial instruments and services offered as determined by the laws and regulations in force or, in the absence of such documents, a prospectus on each of the products, financial instruments and services offered, drafted under the responsibility of the person or institution commissioning the direct marketing and indicating the specific risks, if any, that the products offered might entail;

5. The terms of the contractual proposal, including the total cost actually payable by the person solicited, or, if an exact cost cannot be indicated, the basis of calculation of the cost, to enable the person solicited to verify it, and the terms and conditions under which the contract will be entered into, including the place and date of its signing;

6. Information relating to the existence or otherwise of the right to withdraw provided for in Article L. 121-20-15 of the Consumer Code or Article L. 341-16 of this code, as well as the procedure for exercising it.

7. The law applicable to the pre-contractual relations and the contract, and the existence of any choice-of-jurisdiction clause.

The information concerning contractual obligations supplied to the person solicited by the service provider shall comply with the law applicable to any contract entered into.

Such information, whose commercial nature must be evident, shall be conveyed in a clear and understandable manner by any means compatible with the remote communication method used.

The decree issued following consultation with the Conseil d'Etat referred to in the first paragraph also determines the specific arrangements applicable where communication is via voice telephony.

These provisions apply without prejudice to application of the statutory and regulatory obligations specific to each product, financial instrument or service offered.

Art. L. 341-13. The direct marketer is prohibited from offering products, financial instruments or services other than those in respect of which he has received express instructions from the person(s) for whom he is acting.

Art. L. 341-14. A contract relating to the provision of an investment service or a related service, the execution of a financial-instrument transaction, a banking transaction or a related transaction, a payment service or a transaction relating to miscellaneous property is entered into between the person

solicited and the institution, firm or legal entity authorised to carry out such transactions, and the direct marketer is not authorised to sign for and on behalf of the person for whom he is acting.

Art. L. 341-15. - All direct marketers are prohibited from receiving cash, bills, securities, bearer cheques or cheques made out to them, or any other form of payment, from persons solicited, without prejudice to the means of exercising the right to withdraw provided for in paragraph II of Article L. 341-16.

Art. L. 341-16 - I. - The person solicited has a period of fourteen full calendar days in which to exercise his right to withdraw, without being required to give a reason or incur any penalty.

The period during which the right to withdraw may be exercised begins:

1 Either on the day on which the contract is entered into;

2 Or on the day on which the person solicited receives the contractual terms and conditions and the information, if such date is later than the date referred to in paragraph 1.

II. - If he exercise his right to withdraw, the person solicited may only be required to pay the amount corresponding to the use of the financial product or service actually provided between the date of execution of the contract and the date on which said right to withdraw is exercised, and no penalty can apply.

The direct marketer may only demand payment from the person solicited in respect of the product or service referred to in the first paragraph if he can show that the person solicited was informed of the amount payable pursuant to paragraph 5 of Article L. 341-12.

He may, nevertheless, not demand such payment if he commenced performance of the contract before the expiry of the withdrawal period without the persons solicited having so requested.

The direct marketer is required to repay to the person solicited, as soon as possible and within thirty days at the latest, all monies received from him pursuant to the contract, save for the amount referred to in the first paragraph. Said period commences on the day on which the direct marketer receives notification from the person solicited informing him of his desire to withdraw.

The execution of contracts relating to custody or administration services for financial instruments and portfolio management for third parties is deferred while the right to withdraw remains effective.

III. - The withdrawal period provided for in the first paragraph of paragraph I shall not apply to:

1. The receipt-transmission and order-processing services on behalf of the third parties referred to in Article L. 321-1, or the provision of financial instruments referred to in Article L. 211-1;

2. Where provisions specific to certain products and services provide for a grace period or withdrawal period of a different duration, in which case it is said periods which apply in regard to direct marketing.

3 Contracts fully executed by the two parties at the express request of the person solicited before he exercises his right to withdraw;

IV. - In the event of direct marketing being carried out pursuant to the terms specified in the eighth paragraph of Article L. 341-1, the persons referred to in Articles L. 341-3 and L. 341-4 shall not collect orders or funds from the persons solicited with a view to providing receipt-transmission and order-processing services on behalf of the third parties referred to in Article L. 321-1 or for the financial instruments referred to in Article L. 211-1 before expiry of a forty-eight-hour grace period.

Said grace period runs from the day following receipt of written confirmation, on paper, that the information and documents referred to in Article L. 341-12 have been delivered to the person solicited.

The absence of a reply from the person solicited after expiry of the grace period shall not be deemed to constitute said person's consent.

## Section 5 Disciplinary sanctions

Art. L. 341-17. Any violation of the laws, regulations or professional obligations applicable to the direct marketing of banking services or other financial services committed by the persons referred to in paragraphs 1 and 3 of Article L. 341-3 and in Article L. 341-4 shall be punishable as determined in Articles L. 612-39, L. 621-15 and L. 621-17, consistent with their status or their activities.

## CHAPTER II Direct marketing and canvassing in connection with bullion and foreign banknote transactions

### Section 1 Bullion transactions

Art. L. 342-1. Canvassing and direct marketing with a view to selling, buying or exchanging gold in the form of ingots, bars, foreign currencies or demonetised gold coins is prohibited.

Whoever goes to the domicile of private individuals, other than bankers, brokers and traders in precious metals, or to public places not designated for such use, to sell or to purchase the aforementioned items, with immediate delivery and payment, in whole or in part, for cash or for securities, is engaged in canvassing.

Art. L. 342-2. I. - Whoever habitually goes to the domicile of private individuals, other than bankers, brokers and traders in precious metals, or to public places not designated for such use, to offer advice on the purchase, sale or exchange of the items referred to in the first paragraph of Article L. 342-1, or to offer participation in forward transactions relating to those same items, or in syndicates that carry out transactions based on price differentials relating to said items, is engaged in direct marketing.

II. - Offers of services habitually made by letter, circular, telephone or any other means at the domicile of persons other than bankers, brokers and traders in precious metals, or in public places not designated for such use, with a view to executing the transactions referred to in paragraph I, are also deemed to be acts of direct marketing prohibited by Article L. 342-1.

### Section 2 Transactions relating to foreign banknotes

Article L. 342-3 - Canvassing and direct marketing with a view to selling or exchanging foreign banknotes are prohibited.

Whoever goes to the domicile of private individuals, other than bankers and brokers, or to public places, to sell or purchase such banknotes, with immediate delivery and payment, in whole or in part, for cash or for securities, is engaged in the canvassing of foreign banknotes.

Whoever habitually goes to the domicile of private individuals, other than bankers and brokers, or to public places, to offer advice on the purchase, sale or exchange of such banknotes, or to offer participation in forward transactions relating to such banknotes, or in syndicates that carry out transactions based on price differentials relating to those same banknotes, is engaged in the direct marketing of foreign banknotes.

Offers of services habitually made (by letter, circular, telephone or any other means) at the domicile of persons other than bankers and brokers, or in public places, with a view to executing the transactions referred to in the previous paragraph, are also deemed to be acts of direct marketing prohibited by this article.

## III Distance provision of financial services to a consumer

Art. L. 343-1. The distance provision of financial services to a consumer, as defined in Article L. 121-20-8 of the Consumer Code, is governed by the provisions of Subsections 2 and 3 of Section 2 of Chapter 1 of Part II of Book I of that same code, reproduced hereunder:

### Subsection 2: Provisions specific to contracts relating to financial services

*Art. L. 121-20-8. This subsection governs the provision of financial services to a consumer within the framework of a distance selling or service provision system organised by the provider or an intermediary who, for said contract, relies solely on one or more remote communication methods up to and including the conclusion of the contract.*

*It applies to the services referred to in Books I to III and Part V of Book V of the Monetary and Financial Code and to transactions carried out by companies governed by the Insurance Code, the mutual societies and unions governed by Book II of the Mutuality Code and by the provident societies and unions governed by Part III of Book IX of the Social Security Code, without prejudice to the specific provisions made by said codes.*

*Art. L. 121-20-9. For contracts relating to financial services that call for an initial service agreement followed by successive transactions or a series of separate transactions of the same kind at regular intervals, the provisions of this subsection apply to the initial service agreement only. For contracts renewable by tacit agreement, the provisions of this subsection apply to the initial service agreement only.*

*Where there is no initial service agreement and successive or separate transactions of the same kind are carried out between the same parties at regular intervals, the provisions of Article L. 121-20-10 apply to the first transaction only. However, if no transaction of the same kind is carried out during a period of more than one year, these provisions apply to the next transaction, which shall be deemed to be an initial transaction.*

*Art. L. 121-20-10. In good time and before he is bound by a contract, the consumer receives information as determined in a decree issued following consultation with the Conseil d'Etat, relating, inter alia, to:*

*1 The provider's name and address and, where applicable, those of its representative and intermediary;*

*2 The specific information sheets relating to the products, financial instruments and services offered as determined by the laws and regulations in force or, in the absence of such documents, a prospectus on each of the products, financial instruments and services offered which indicates the specific risks, if any, that the products offered might entail;*

3 The terms of the contractual proposal, including the total cost actually payable by the consumer, or, if an exact cost cannot be indicated, the basis of calculation of the cost, to enable the consumer to verify it, and the terms and conditions under which the contract will be entered into, including the place and date of its signing;

4 The existence or otherwise of a right to withdraw and the procedure for exercising it;

5. The law applicable to the pre-contractual relations and the contract, and the existence of any choice-of-jurisdiction clause.

The information concerning contractual obligations supplied to the consumer by the provider shall comply with the law applicable to any contract entered into.

This information, whose commercial nature must be evident, shall be conveyed in a clear and understandable manner by any means compatible with the remote communication method used.

These provisions apply without prejudice to application of the statutory and regulatory obligations specific to each product, financial instrument or service offered.

The decree issued following consultation with the Conseil d'Etat referred to in the first paragraph also determines the specific arrangements applicable where communication is via voice telephony.

Art. L. 121-20-11. The consumer must receive the contractual terms and conditions on paper or another durable medium which is readily available to him in good time, and before any commitment is made, along with the information referred to in Article L. 121-20-10. *(The provider may meet its obligations under Article L. 121-20-10 and this article by sending the consumer a single document, provided that it is on paper or another durable medium and that the information referred to remains unchanged until such time as the contract is entered into.) [It is provided to the consumer pursuant to the laws and regulations specific to each product, financial instrument or service offered.]*

The provider fulfils its disclosure requirements immediately after the conclusion of the contract if the contract is entered into at the consumer's request via a remote communication method which does not permit transmission of the pre-contractual and contractual information on paper or another durable medium. *[In this case and where the contract relates to a transaction referred to in the first paragraph of Article L. 311-42, the provider is required to send only the contractual information to the consumer.]*

At any time during the contractual relationship, the consumer is entitled, if he so requests, to receive the terms and conditions of the contract on paper. Moreover, the consumer is entitled to change the remote communication method used, unless this is incompatible with the distance contract entered into or with the nature of the financial service provided.

*Amended by Order No. 2010-737 of 1 July 2010 Art. 12 Official Journal of 2 July 2010 **effective 1 May 2011***

Art. L. 121-20-12 I. - The consumer has a period of fourteen full calendar days in which to exercise his right to withdraw, without being required to give a reason or incur any penalty.

The period during which the right to withdraw may be exercised begins:

1 Either on the day on which the distance contract is entered into;

2 Or on the day on which the consumer receives the terms and conditions of the contract and the information pursuant to Article L. 121-20-11, if this date is later than the date referred to in paragraph 1.

II. - The right to withdraw shall not apply to:

1 The provision of the financial instruments referred to in Article L. 211-1 of the Monetary and Financial Code or to the receipt-transmission and order-processing services for third parties referred to in Article L. 321-1 of that same code;

2 Contracts fully executed by the two parties at the express request of the consumer before he exercises his right to withdraw;

3 The real-property contracts described in Article L. 312-2.

4 The lifetime mortgage contracts described in Article L. 314-1.

III. - This article shall not apply to the contracts referred to in Article L. 121-60.

IV. - For the allotted credit agreements described in Article L. 311-1 entered into via a remote communication method, and as an exception to the provisions of Article L. 311-24, the fourteen-day withdrawal period cannot be reduced.

Exercise of the right to withdraw only entails automatic cancellation of the contract of sale or contract for the provision of services if it takes place within seven days of the conclusion of the credit agreement. Moreover, if the consumer expressly requests immediate delivery or provision of the product or service, exercise of the right to withdraw only entails automatic cancellation of the contract of sale or contract for the provision of services if it takes place within three days of the conclusion of the credit agreement. Any early delivery or provision is the seller's responsibility and is at its risk.

*Amended by Act No. 2008-776 of 4 August 2008 Art. 68 Official Journal of 5 August 2008*

*Amended by Order No. 2010-737 of 1 July 2010 Art. 12 Official Journal of 2 July 2010*

Art. L. 121-20-13. I. - Contracts to which the withdrawal period referred to in Article L. 121-20-12 applies shall not take effect between the parties until said period has expired unless the consumer so consents. When the consumer exercises his right to withdraw, he may be required to effect a proportional payment for the financial service actually provided, but does not incur any penalty.

The provider can only require the consumer to pay for the service referred to in the first paragraph if it can show that the consumer was informed of the amount due pursuant to Article L. 121-20-10. It shall nevertheless not demand such payment if it commenced performance of the contract before the expiry of the withdrawal period without the consumer having so requested.

Performance of the consumer credit agreements provided for in Chapter 1 of Part I of Book III may not commence during the first seven days, even with the consumer's consent, with the exception of the allotted credit agreements referred to in paragraph IV of Article L. 121-20-12, performance of which shall not commence during the first three days.

II. - The provider is required to repay to the consumer all the monies it received from him pursuant to the contract as soon as possible and within thirty days at the latest, with the exception of the amount referred to in the first paragraph of paragraph I. Said period runs from the day on which the provider receives notification from the consumer of his desire to withdraw. Beyond the thirty-day period, interest is automatically applied to the sum due at the legal interest rate in force.

The consumer shall return to the provider as soon as possible and within thirty days at the latest any sum and any product which he has received from it. Said period runs from the day on which the consumer informed the provider of his desire to withdraw.

Art. L. 121-20-14. The provisions of Article L. 34-5 of the Post and Electronic Communications Code, reproduced in Article L. 121-20-5, shall apply to financial services.

The remote communication methods intended for the marketing of financial services other than those referred to in Article L. 34-5 of the Post and Electronic Communications Code may be used only if the consumer has not raised an objection thereto.

The measures provided for in this article shall not give rise to any cost for the consumer.

### Subsection 3 Common provisions

Art. L. 121-20-15. Where the parties have chosen the law of a State which is not a member of the European Community to govern the contract, the judge before whom said law is invoked is required to dismiss application thereof in favour of the more protective provisions of the law of the consumer's normal place of residence transposing Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts, and Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services, where the contract is closely linked to the territory of one or more Member States of the European Community; this condition shall be deemed to be met if the consumer's residence is located in a Member State.



*Art. L. 121-20-16. The provisions of this section are a matter of public policy.*

*Articles inserted by 4 of Article 5 of Order No. 2005-648 of 6 June 2005 concerning the distance marketing of consumer financial services Official Journal of 7 June 2005.*

*NB: Article L. 121-20-17 of the Consumer Code was repealed by paragraph II of Article 4 of Order No.2005-1086 of 1 September 2005.*

Art. L. 343-2. Where distance provision of financial services to a consumer is preceded by direct marketing within the meaning of Article L. 341-1, Article L. 341-12 applies instead of Article L. 121-20-10 of the Consumer Code and the references made to said article are replaced by references to Article L. 341-12.

## PART V CRIMINAL PROVISIONS

### CHAPTER I Violations relating to the right to hold an account and relations with the customer

Art. L. 351-1. Non-fulfilment of an obligation referred to in the second, (third, fourth and seventh) (fourth, fifth and eighth) paragraphs of paragraph I of Article L. 312-1-1 and, where the customer is an individual acting for non-commercial purposes, Article L. 314-12 and paragraph II of Article L. 314-13, incurs a tax fine of 75 EUR. Said fine is imposed and collected pursuant to the rules applicable to value added tax. The proceedings are instituted by the authority which established the offence.

Where the customer is an individual acting for non-commercial purposes, non-fulfilment of one of the obligations referred to in the first paragraph of paragraphs I, II of Article L. 312-1-1, III of Article L. 314-13, VII of Article L. 314-13, or one of the prohibitions decreed in paragraph I of Article L. 312-1-2, incurs the fine stipulated for offences of the fifth class.

Before bringing a public action seeking application of the penalty provided for in this article, the Public Prosecutor's Office may seek the opinion of the Banking Mediation Commission referred to in paragraph II of Article L. 312-1-3, if it deems it necessary. In the event of a complaint being lodged with filing of a civil action in relation to violations of the provisions referred to in the first paragraph, the Public Prosecutor may seek the opinion of the Comité de la Médiation Bancaire before drafting his submissions. The submissions are sent to the investigating judge after receipt of the committee's opinion.

In the event of the injured party issuing a direct summons for a criminal court (Tribunal Correctionnel) hearing for the offences referred to in the previous paragraph, the presiding judge may seek the opinion of the Comité de la Médiation Bancaire before any consideration of the merits. Said opinion is sent to the parties and to the court by the committee and filed with the court.

The Comité de la Médiation Bancaire shall give its decision within six weeks, at the latest, of receiving the request for an opinion. In said opinion, it assesses, inter alia, the seriousness of the facts and the repetitive nature thereof, if any.

*Amended by Order No. 2010-737 of 1 July 2010 Art. 16 Official Journal of 2 July 2010 effective 1 May 2011*

*Art. L. 351-2 and 3.*

### CHAPTER II Offences relating to the depositors' guarantee fund

Art. L. 352-1. The fact of a member of the Executive Board or the Supervisory Board of the depositors' guarantee fund, or any person who, on account of his duties, has access to the documents and information held by said fund, violating the professional secrecy instituted by Article L. 312-14 incurs the penalties stipulated in Article 226-13 of the Criminal Code.

### CHAPTER III Offences relating to direct marketing

#### Section 1 Direct marketing of banking services or other financial services

Art. L. 353-1. The following offences shall incur a penalty of six months' imprisonment and a fine of 7,500 euros:

1. The fact of any person engaged in the direct marketing of banking services or other financial services as defined in Article L. 341-1 not having obtained an professional licence, where said activity is carried out as referred to in Article L. 341-8;

2. The fact of any person engaged in the direct marketing of banking services or other financial services as defined in the seventh paragraph of Article L. 341-1 failing to provide the person solicited with the information and documents referred to in Article L. 341-12 and the penultimate paragraph of Article L. 341-6;

3. The fact of any person engaged in the direct marketing of banking services or other financial services as defined in Article L. 341-1 failing to comply with the rules laid down in Article L. 341-14 relating to the signing of the contract;

4. The fact of any person engaged in the direct marketing of banking services or other financial services as defined in Article L. 341-1 not allowing the person solicited to benefit from the withdrawal period referred to in Article L. 341-16, without prejudice to the derogations provided for in said article;

5. The fact of any person engaged in the direct marketing of banking services or financial services as defined in the second paragraph of Article L. 341-1 receiving orders or funds from the persons solicited with a view to providing receipt-transmission and order-processing services on behalf of third parties referred to in Article L. 321-1, or financial instruments referred to in Article L. 211-1, before expiry of the forty-eight-hour period referred to in paragraph IV of Article L. 341-16.

The following acts incur the penalties imposed by Article 313-1 of the Criminal Code:

1. The fact of any person commissioning the direct marketing of banking services or other financial services as described in Article L. 341-1 without meeting the conditions stipulated in Articles L. 341-3 and L. 341-4;

2. The fact of any person engaged in the direct marketing of banking services or other financial services as described in Article L. 341-1 offering prohibited products within the meaning of Article L. 341-10;

4. The fact of any person engaged in the direct marketing of banking services or other financial services offering the persons

solicited products, financial instruments and services other than those in respect of which he has received express instructions from the person(s) for whom he is acting;

5. The fact of any person engaged in the direct marketing of banking services or other financial services receiving cash, bills, securities, bearer cheques, or cheques made out to himself, or payment by any other means, from the persons solicited.

Art. L. 353-3. - Individuals guilty of one of the offences referred to in Articles L. 353-1 and L. 353-2 also incur the following additional penalties:

1. Forfeiture of civic, civil and family rights as provided for in Article 131-26 of the Criminal Code;

2. Disqualification, pursuant to Article 131-27 of the Criminal Code, from public office or from exercising the professional or corporate activity in connection with which the offence was committed, for a maximum period of five years;

3. Posting or publication of the decision delivered, as determined in Article 131-35 of the Criminal Code.

Art. L. 353-4. Legal entities declared criminally liable within the meaning of Article 121-2 of the Criminal Code for the offences indicated in Articles L. 353-1 and L. 353-2 shall incur, in addition to the fine provided for in Article 131-38 of the Criminal Code, the penalties stipulated in Article 131-39 of that same Code.

The disqualification referred to in paragraph 2 of Article 131-39 of the Criminal Code relates to the activity in connection with which, or in parallel with which, the offence was committed.

Art. L. 353-5. The agents referred to in Article L. 450-1 of the Commercial Code are qualified to conduct inquiries and record the offences indicated in Articles L. 353-1 and L. 353-2 of this Code, as provided for in Articles L. 450-2 to L. 450-4, L. 450-7 and L. 450-8 of the Commercial Code.

## **Section 2 Bullion and foreign banknote transactions**

Art. L. 353-6. The fact of any person failing to meet the obligations imposed for transactions relating to bullion and banknotes by Articles L. 342-1 to L. 342-3 shall incur a penalty of six months' imprisonment and a fine of 9,000 euros.

The seizure and confiscation of the items referred to in Articles L. 342-1 to L. 342-3 are compulsory.

# BOOK IV

## THE MARKETS

### PART I: TRANSACTIONS

#### Chapter I Definitions and Scope

Art. L. 411-1. - An offer of securities to the public shall take one of the following forms:

1. An advertisement, regardless of its form or method of dissemination, which contains sufficient information on the conditions of the offer and the securities being offered to enable an investor to decide whether to buy or subscribe to such securities;

2. A placing of securities by financial intermediaries.

Art. L. 411-2. - I. — The offer of financial securities referred to in paragraph I, 1 or 2, of Article L. 211-1 shall not constitute an offer to the public within the meaning of Article L. 411-1 where it relates to securities which the issuer is authorised to offer to the public and:

1. The total amount thereof is below an amount set by the General Regulation of the Autorité des Marchés Financiers (AMF) or an amount plus a fraction of the issuer's capital set by the General Regulation. The total amount of the transaction is calculated over a twelve-month period as provided for in the General Regulation;

2. Or where those who take up the offer buy such financial securities for a total amount per investor and per transaction above an amount set by the General Regulation of the Autorité des Marchés Financiers;

3. Or where the denomination of each of the financial securities is above an amount set by the General Regulation of the Autorité des Marchés Financiers.

II. — An offer exclusively intended for the following entities and individuals shall not constitute an offer to the public within the meaning of Article L. 411-1:

1. Entities providing portfolio management services for third parties;

2. Qualified investors or a restricted circle of investors, provided that said investors are acting for their account.

A qualified investor is an individual or an entity possessing the expertise and resources required to apprehend the risks inherent in transactions in financial instruments. The list of investor categories recognised as qualified is determined by decree.

A restricted circle of investors has a number of members below a threshold set by decree who are not qualified investors.

Art. L. 411-3. – The provisions of this Part shall not apply to offers or to admissions to trading on a regulated market in the following:

1. Financial securities unconditionally and irrevocably guaranteed or issued by a Member State of the European

Community or by a State party to the European Economic Area Agreement;

2. Financial securities issued by a public international organisation which France belongs to;

3. Financial securities issued by the European Central Bank or the central bank of a State party to the European Economic Area Agreement;

4. Financial securities issued by an institution referred to in paragraph I, 1 or 5, of Article L. 214-1;

5. Negotiable debt securities having a term shorter than or equal to one year.

*Inserted by Order No. 2009-80 of 22 January 2009 Art. 1 Official Journal of 23 January 2009*

Art. L. 411-4. – For the purposes of the provisions of the Criminal Code and of order No. 45-2138 of 19 September 1945 which instituted the Order of Accountants and regulates the title and profession of accountant, legal entities or undertakings carrying out transactions referred to in paragraph I of Article L. 411-2 shall be deemed to have made an offer to the public within the meaning of Article L. 411-1.

*Inserted by Order No. 2009-80 of 22 January 2009 Art. 1 Official Journal of 23 January 2009*

#### Chapter II General Provisions

##### Section 1 Disclosure requirements

Art. L. 412-1. I - Without prejudice to the other provisions applicable to them, individuals or entities who make an offer of securities to the public or who seek to have financial securities admitted to trading on a regulated market shall, prior to doing so, publish and make available to any interested party a document designed to inform the public of the content and terms and conditions of the transaction and of the issuer's organisation, financial position and business development and those of any guarantor of the financial securities concerned, as determined in the General Regulation of the Autorité des Marchés Financiers. Said document shall be written in French or, in certain cases specified in said General Regulation, another language widely used in financial dealings. It shall include a summary and must be accompanied, where applicable, by a French translation of said summary, unless the transaction is an admission to trading on a regulated market without an offer to the public within the meaning of Article L. 411-1.

No action for civil damages may be brought solely on the basis of the summary or of its translation, unless the content of the summary or of its translation is misleading, inaccurate or in contradiction to the information contained in the other parts of the document referred to in the first paragraph.

The General Regulation of the Autorité des Marchés Financiers determines the circumstances in which offers to the public of securities, or admissions of financial securities to trading on a regulated market, which do not need to be made known to the public on account of their nature or their volume, the nature of the issuer or of the investors targeted, or the nature or denomination of the financial instruments concerned, shall be exempted from drawing up all or part of the document referred to in the first paragraph.

II. — The General Regulation also determines how the public shall be informed when financial securities are admitted

to trading on a regulated market or on a multilateral trading facility which is subject to the laws or regulations intended to protect investors from insider dealing, price manipulation and the dissemination of false information.

The General Regulation may take into account the fact of the financial securities being traded, or not being traded, on a market in financial instruments other than a regulated market and, where such is the case, the characteristics of said market. It may also provide for certain rules to apply only to certain markets in financial instruments, at the request of the entity managing them.

## Section 2 Prohibitions and sanctions

Art. L. 412-2. - The prohibitions on issuing securities, offering securities to the public or having financial securities admitted to trading on a regulated market are imposed by Articles L. 223-11, L. 227-2 and the first paragraph of Articles L. 228-39 and L. 252-10 of the Commercial Code.

Art. L. 412-3. - Non-observance of the prohibitions imposed in the articles of the Commercial Code referred to in Article L. 412-2 shall incur the voidance of any contract entered into or any financial securities issued.

*Art. L. 412-4.*

# Part II: TRADING PLATFORMS

## CHAPTER I French Regulated Markets

### Section 1 Definition of a regulated market and of a market undertaking

Art. L. 421-1. - A regulated market in financial instruments is a multilateral facility which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments in accordance with non-discretionary rules, in a way that results in contracts in respect of the financial instruments admitted to trading under its rules and systems, and which functions regularly in accordance with the provisions applicable to it.

**II. – A regulated market in financial instruments as defined in paragraph I may also bring together or facilitate the bringing together of multiple third-party buying and selling interests - in accordance with non-discretionary rules - in respect of the greenhouse gas emission quotas described in Article L. 229-15 of the Environmental Code and the other units referred to in Chapter IX of Part II of Book II of said code.**

**A regulated market in financial instruments as defined in paragraph I may also bring together or facilitate the bringing together of multiple third-party buying and selling interests - in accordance with non-discretionary rules - in respect of assets appearing on a list determined in a decree issued after consultation with the Autorité des Marchés Financiers.**

*Replaced by Order No. 2007-544 of 12 April 2007 Art. 3 Official Journal of 13 April 2007*

Art. L. 421-2. – **I.** A regulated market is run by a market undertaking which is a commercial company. Where a market undertaking runs a regulated market governed by the provisions of this code, its registered office and its effective management shall be located in Metropolitan France or its overseas *départements* or in Saint Barthélemy or Saint Martin. The market undertaking shall at all times comply with the laws and regulations applicable to it.

The market undertaking performs the activities pertaining to the organisation and operation of each regulated market it manages. It shall ensure that each regulated market it manages meets the requirements applicable to it at all times.

*Replaced by Order No. 2007-544 of 12 April 2007 Art. 3 Official Journal of 13 April 2007*

Art. L. 421-3. – The Autorité des Marchés Financiers may appoint a representative to the market undertaking to whom all administrative, management and representation powers of the legal entity shall be transferred.

Said appointment shall be made either at the request of the executives if they consider that they are no longer able to exercise their functions normally, or on the initiative of the Autorité des Marchés Financiers where the management of a regulated market or of a multilateral trading facility can no



longer be carried out in a manner that guarantees its orderly operation.

Where particularly urgent circumstances so warrant, the Autorité des Marchés Financiers may appoint a provisional representative without consultation. Said measure shall be confirmed within a timeframe stipulated in a decree issued following consultation with the Conseil d'Etat. It may be cancelled at any time.

A decree shall determine this Article's implementing provisions, as necessary.

## Section 2 Recognition, review and withdrawal of regulated market status

Art. L. 421-4. Recognition as a regulated market in financial instruments shall be decided by order of the Minister for the Economy on a proposal from the Autorité des Marchés Financiers.

The Autorité des Marchés Financiers shall consult the Autorité de Contrôle Prudentiel concerning the measures the market undertaking plans to take to comply with the obligations referred to in paragraphs I, 2 and 4, and II of Article L. 421-11. The General Regulation of the Autorité des Marchés Financiers determines the criteria on which it approves the programme of operations and proposes recognition of the regulated market.

In the same way, the Autorité des Marchés Financiers shall propose a review of the regulated market status if it considers that the conditions attached to the initial proposal are no longer met.

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Art. L. 421-5. – On a proposal from the Autorité des Marchés Financiers, the Minister for the Economy may withdraw recognition from a regulated market in one or other of the following cases:

1. If the market undertaking does not make use of it within twelve months, if it expressly relinquishes it or if the market has not traded for six months;
2. If the market undertaking obtained it through false declarations or by any other irregular means;
3. If the regulated market no longer meets the conditions attached to its recognition;
4. If the market undertaking has seriously and repeatedly violated the provisions applicable to it.

Art. L. 421-6. – The regulated markets regularly operating as of 1 November 2007 shall be recognised as regulated markets within the meaning of Article L. 421-1.

## Section 3 Operating conditions of the regulated markets and market undertakings

### Sub-section 1 Obligations of the executives and shareholders of market undertakings

Art. L. 421-7. – The Autorité des Marchés Financiers shall ensure that the individuals who effectively manage a market undertaking have sufficient respectability and experience to guarantee the sound and prudent management of the market. To this end, the market undertaking shall inform the Autorité des Marchés Financiers in advance of the identity of said individuals and of any change concerning them. The Autorité des Marchés Financiers approves their appointment in the manner and under the terms stipulated in its General Regulation.

Art. L. 421-8. – The members of the administrative, management and supervisory bodies, the executives and all the employees of the market undertakings shall be bound by professional secrecy.

Art. L. 421-9. – I. – Individuals who are in a position to directly or indirectly exert significant influence on the management of a regulated market must have personal qualities that guarantee the sound and prudent management of said market.

Whoever comes to hold, either directly or indirectly, alone or in concert, a fraction of the capital or voting rights of a market undertaking in excess of one tenth, one fifth, one third, one half or two thirds shall be required to inform the market undertaking thereof in accordance with terms and conditions determined by decree. The market undertaking shall forward the information to the Autorité des Marchés Financiers and shall publish it.

In the event of a breach of said reporting obligation and without prejudice to the provisions of Article L. 233-14 of the Commercial Code, the Autorité des Marchés Financiers or any shareholder may ask the judge to suspend exercise of the voting rights attached to the market undertaking's shares which have not been properly declared until action has been taken to remedy the breach.

II. – Any shareholder who comes to acquire direct or indirect control of a market undertaking must obtain prior authorisation from the Minister for the Economy on a proposal from the Autorité des Marchés Financiers, the latter having ensured that there are no objective and demonstrable reasons for believing that such a change of control would risk compromising the sound and prudent management of the regulated market.

### Sub-section 2 Obligations of the market undertaking

Art. L. 421-10. – The market undertaking shall draw up the market rules with a view to obtaining recognition of the regulated market. Said rules, which shall be transparent and non-discretionary, shall provide for fair and orderly trading and establish objective criteria to facilitate efficient execution of orders. They shall also determine the conditions of admission for market members pursuant to the provisions of Article L. 421-17.

They shall determine, inter alia, the conditions of access to the market and admission to trading of financial instruments and **the assets referred to in paragraph II of Article L. 421-1**, the provisions for organisation of the transactions, the conditions for suspension of trading in one or more financial instruments and **the assets referred to in paragraph II of Article L. 421-1**, and the provisions relating to the registration and publication of trading information.

Said rules shall be approved by the Autorité des Marchés Financiers, which shall verify their compliance with the applicable laws and regulations while ensuring that they are commensurate with the objectives pursued.

Proposals for amendments to said rules shall be notified to the Autorité des Marchés Financiers, which shall approve them within a time limit set by its General Regulation after carrying out the verifications provided for in the previous paragraph.

The market rules shall be published by the market undertaking as provided for in the General Regulation of the Autorité des Marchés Financiers.

Art. L. 421-11. – I. – The market undertaking shall take the necessary steps to:

1. Detect, prevent and manage the potentially damaging effects, for the orderly operation of the regulated market or for the market members, of any conflict of interest between the requirements of the orderly operation of the regulated market it manages and its own interests or those of its shareholders;

2. Ensure that it at all times has suitable resources, organisational structures and procedures to monitor and identify any significant risk which could compromise the orderly operation of the regulated market it manages and to take appropriate measures to mitigate such risks;

3. Adopt ethical rules applicable to the members of the administrative, management and supervisory bodies, the executives and all employees, and to verify compliance therewith;

4. Guarantee the orderly operation of the technical trading facilities and have, inter alia, emergency procedures designed to deal with any malfunction;

5. Implement mechanisms to facilitate efficient and timely settlement of the transactions carried out through their facilities.

II. – Upon recognition of the regulated market and at all times thereafter, the market undertaking shall be required to have sufficient financial resources to ensure the orderly operation of the market.

III. – The General Regulation of the Autorité des Marchés Financiers determines the rules relating to paragraph I, 1, 3, and 5. An order of the Minister for the Economy, issued pursuant to Article L. 611-3, determines the rules relating to paragraphs I and II, 2 and 4.

The Autorité des Marchés Financiers shall ensure the proper implementation of the provisions of paragraphs I and II pursuant to Article L. 621-9. For the rules relating to paragraphs I and II, 2 and 4, it shall rely on the inspections carried out by the Autorité de Contrôle Prudentiel in the manner prescribed for the entities referred to in paragraph I, A 2, of Article L. 612-2 and the recommendations that follow.

Art. L. 421-12. – The market undertaking shall establish and maintain provisions and procedures in order to verify that the members of the regulated market comply with its rules and to monitor the smooth processing of the transactions carried out

on it. It shall monitor the transactions carried out thereon by market members in order to detect any violation of said rules, any trading event likely to disrupt the orderly operation of the market or any behaviour that may indicate price manipulation, dissemination of false information or insider dealing.

The market undertaking shall report to the Autorité des Marchés Financiers any significant violation of the provisions of its General Regulation and of the market rules or any trading event likely to disrupt the orderly operation of the market and give rise to a violation referred to in the first paragraph.

It shall send it the relevant information concerning any investigation or proceedings relating to said violations on the regulated market and shall afford it all necessary assistance to investigate and prosecute any such violation committed on the regulated market or via its facilities.

The General Regulation of the Autorité des Marchés Financiers determines this Article's implementing terms and conditions.

Art. L. 421-13. – Any market undertaking that manages a regulated market referred to in Article L. 421-1 which operates without requiring the effective presence of individuals, shall inform the Autorité des Marchés Financiers of the names of the Member States of the European Community or of the other States party to the European Economic Area Agreement in which it intends to provide means of access to said market. The Autorité des Marchés Financiers shall forward such information to the competent authority of the State concerned.

At the request of the competent authority of the regulated market's host State and within a reasonable timeframe, the Autorité des Marchés Financiers shall inform it of the identity of the members of the regulated market established in said State.

## Section 4 Admission to trading, suspension, delisting and withdrawal of financial instruments

Art. L. 421-14. – I. – The admission of financial instruments **and the assets referred to in paragraph II of Article L. 421-1** to trading on a regulated market shall be decided by the market undertaking in accordance with the rules of the market concerned.

Said rules guarantee that any financial instrument and **any asset referred to in paragraph II of Article L. 421-1** admitted to trading on a regulated market may be the subject of fair, orderly and efficient trading and, in the case of the instruments referred in paragraph II, 1 and 2, of Article L. 211-1, may be freely traded.

II. – The express consent of the issuer shall be required in the case of the instruments referred in paragraph II, 1 and 2, of Article L. 211-1 which are not already admitted to trading on another regulated market in a Member State of the European Community or another State party to the European Economic Area Agreement.

Where a financial instrument referred to in paragraph II, 1 or 2, of Article L. 211-1 is already admitted to trading on a regulated market in a Member State of the European Community or another State party to the European Economic Area Agreement with the issuer's consent, it may be admitted to trading on a regulated market without the issuer's consent. In this case, the market undertaking shall duly inform the issuer, which for its part shall not be bound by any obligation of information towards the market undertaking.

III. – The market rules shall ensure that the characteristics of derivative financial instruments facilitate orderly trading and, where applicable, easy delivery of the underlying assets.

IV. – The market undertaking shall be required to put procedures in place to verify that the issuers of securities it admits to trading comply with the provisions applicable to them and facilitate access to the information they publish by market members. **The market undertaking shall be required to introduce similar procedures for the assets referred to in paragraph II of Article L. 421-1 which it admits to trading.** The General Regulation of the Autorité des Marchés Financiers sets forth the implementing provisions for this paragraph.

V. – Where an issuer whose financial instruments are admitted to trading on a regulated market plans to request the admission to trading of its financial instruments on a multilateral trading facility which is subject to the laws or regulations intended to protect investors from insider dealing, price manipulation and the dissemination of false information, it shall inform the public thereof as provided for in the General Regulation of the Autorité des Marchés Financiers at least two months before the date envisaged for the admission to trading of the financial instruments on the multilateral trading facility concerned.

A resolution of the General Meeting shall decide on any request for the admission to trading of the financial instruments on the multilateral trading facility concerned. Such admission cannot take place until at least two months have elapsed since the date of the General Meeting.

The preceding paragraphs shall apply to companies whose market capitalisation is below one billion euros.

*Replaced by Order No. 2007-544 of 12 April 2007 Art., 3 Official Journal of 13 April 2007*

*Amended by Order No. 2009-15 of 8 January 2009 Art., 3 Official Journal of 9 January 2009*

*Amended by Act No. 2009-1255 of 19 October 2009 Art. 12 Official Journal of 20 October 2009*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 9 Official Journal of 23 October 2010*

Art. L. 421-15. – I. – After informing the issuer thereof, the market undertaking may, for a specific period and in accordance with the rules of the regulated market it manages, suspend trading of a financial instrument admitted to trading on said market when a financial instrument or its terms of trading no longer comply with the rules of the regulated market, unless such a measure would be likely to significantly prejudice the interests of investors or compromise the orderly operation of the market.

The chairman of the Autorité des Marchés Financiers, or his legally appointed representative, may ask the market undertaking to suspend trading of a financial instrument.

The issuer of a financial instrument admitted to trading on a regulated market may ask the market undertaking to suspend said instrument to enable information to be provided to the public in a satisfactory manner.

II. – The delisting of a financial instrument may be decided by the market undertaking if it no longer meets the conditions of admission laid down in the market rules, unless such a measure would be likely to significantly prejudice the interests of investors or compromise the orderly operation of the market.

The chairman of the Autorité des Marchés Financiers may also ask the market undertaking to delist a financial instrument.

III. – Decisions to admit to trading, or to suspend or delist, a financial instrument shall be published by the individual who made them, as provided for in the General Regulation of the

Autorité des Marchés Financiers. When a decision to suspend or delist is made by the market undertaking, it shall inform the Autorité des Marchés Financiers thereof.

IV. – As soon as the Autorité des Marchés Financiers is informed of the decision of a competent authority of another Member State of the European Community or another State party to the European Economic Area Agreement to call for the suspension or delisting of a financial instrument from trading on a regulated market, its chairman calls for the suspension or delisting of said instrument, unless such a decision would be likely to affect the interests of investors or the orderly operation of the market.

**V. – The provisions applicable to admissions, suspensions and delistings of the assets referred to in paragraph II of Article L. 421-1 are set forth in the General Regulation of the Autorité des Marchés Financiers.**

Art. L. 421-16. When an exceptional event disrupts the orderly operation of a regulated market, the chairman of the Autorité des Marchés Financiers or his legally appointed representative may suspend trading, partially or completely, for a period not exceeding two consecutive trading days. Beyond said period, the suspension shall be declared by order of the Minister for the Economy issued on a proposal from the chairman of the Autorité des Marchés Financiers. Such decisions shall be published.

If the suspension on a regulated market has lasted more than two consecutive trading days, the transactions in progress on the date of suspension may be cleared and closed in accordance with the market rules.

**II. – In the event of exceptional circumstances threatening the stability of the financial system, the chairman of the Autorité des Marchés Financiers or his representative may take measures to limit the trading terms of financial instruments for a period not exceeding fifteen days. The application of such measures may be extended and, where necessary, the terms thereof may be changed by the Board of the Autorité des Marchés Financiers for a period not exceeding three months with effect from the date of the AMF's chairman's decision. Beyond said period, the application of such measures may be extended by an order of the Minister for the Economy issued on a proposal from the chairman of the Autorité des Marchés Financiers. Such decisions shall be published.**

## Section 5 Rules applicable to the members of a regulated market

Art. L. 421-17. – The market rules determine the conditions of admission for market members in an objective, transparent and non-discriminatory manner.

Without prejudice to the provisions of Article L. 531-10, regulated markets may admit as members, in addition to investment service providers, individuals who:

- a) Offer guarantees of respectability and competence in financial matters;
- b) Can show sufficient aptitude for trading;
- c) Have, where necessary, a suitable organisation;

d) And have sufficient resources to meet their obligations, based on the financial mechanisms that may have been introduced by the market undertaking in order to ensure settlement of the transactions.

Market members shall not be required, between themselves, to comply with the obligations set out in Articles L. 533-11 to L. 533-16, L. 533-18 and L. 533-19 relating to transactions entered into on the regulated market.

The market rules must authorise direct or remote admission of investment service providers authorised in another Member State of the European Community or another State party to the European Economic Area Agreement.

The market undertaking provides the Autorité des Marchés Financiers with a list of the members of the regulated market on a regular basis.

The General Regulation of the Autorité des Marchés Financiers sets forth the implementing provisions of this Article and stipulates, inter alia, the obligations incumbent on market members. Without prejudice to the powers conferred on the Banque de France by paragraph II of Article L. 141-4, the General Regulation sets forth the circumstances in which the market undertaking may limit the choice of systems used for settlement and delivery of financial instruments and the **assets referred to in paragraph II of Article L. 421-1** by market members.

Art. L. 421-18. Admission to, and continued membership of, a regulated market granted by the market undertaking which organises the transactions on said market shall be contingent upon compliance with said market's rules.

The relations between a market undertaking and the members of the regulated market it manages are of a contractual nature.

Art. L. 421-19. Market undertakings cannot limit the number of investment service providers on the market for which they are responsible.

The Autorité des Marchés Financiers shall ensure that the market undertakings adapt, as and where necessary, their technical capability to the requests for access received.

Art. L. 421-20. – Investment service providers authorised in a Member State of the European Community or in a State party to the European Economic Area Agreement other than France to execute orders on behalf of third parties or to trade for their account may become members of a regulated market referred to in Article L. 421-1:

a) Either directly, by establishing a branch in Metropolitan France or in the overseas *départements* or in Saint Barthélemy or Saint Martin;

b) Or by becoming remote members of said market.

## Section 6 Pre- and after-trade transparency obligations

Art. L. 421-21. – I. – The market undertaking shall publish the bid and offer prices and the number of financial instruments they relate to on its display systems for the shares admitted to trading on the regulated market it manages.

Such information shall be made available to the public on reasonable commercial terms and on a continuous basis during normal trading hours.

The market undertaking may grant investment service providers which are required to publish their share prices pursuant to Article L. 425-2 access, on reasonable commercial terms and on a non-discriminatory basis, to the mechanisms it uses to make the information referred to in the first paragraph available to the public.

The General Regulation of the Autorité des Marchés Financiers stipulates the circumstances in which the provisions of this article may be waived, particularly in regard to the market model and the type or size of the orders.

II. – The General Regulation of the Autorité des Marchés Financiers may also determine the information which must be made available to the public concerning financial instruments other than those referred to in the first paragraph **and the assets referred to in paragraph II of Article L. 421-1**.

Art. L. 421-22. – I. – The market undertaking shall publish the price, the volume and the time of the transactions carried out with shares admitted to trading on the regulated market it manages.

Said transactions are made public on reasonable commercial terms and, whenever possible, immediately.

The market undertaking may grant investment service providers which are required to publish a breakdown of their share transactions pursuant to Article L. 533-24, on reasonable commercial terms and on a non-discriminatory basis, access to the mechanisms it uses to make public the information referred to in the first paragraph.

II. – The General Regulation of the Autorité des Marchés Financiers stipulates the circumstances in which the disclosure of transactions may be deferred on account of their type or their size.

The General Regulation of the Autorité des Marchés Financiers may also determine the information which must be made available to the public concerning financial instruments other than those referred to in the first paragraph **and the assets referred to in paragraph II of Article L. 421-1**.

## Chapter II European Regulated Markets

Art. L. 422-1. – I. – Any regulated market in a Member State of the European Community or another State party to the European Economic Area Agreement which operates without requiring the effective presence of individuals may offer the means of access to said market in Metropolitan France and the overseas *départements* and in Saint Barthélemy and Saint Martin.

II. – If the Autorité des Marchés Financiers has clear and demonstrable reasons for believing that a regulated market of another Member State of the European Community or another State party to the European Economic Area Agreement which offers means of access in Metropolitan France and the overseas *départements* and in Saint Barthélemy and Saint Martin is in breach of the obligations incumbent upon it, it shall inform the competent authority of said regulated market's home State thereof.

If, despite the measures taken by the competent authority of the home State, or because such measures have proved to be



inadequate, the regulated market continues to operate in a manner which is clearly detrimental to the interests of investors or to the orderly operation of the markets in France, the Autorité des Marchés Financiers, after duly informing the competent authority of the home State thereof, shall take all appropriate and necessary measures to protect investors or to preserve the orderly operation of the markets. It may, inter alia, prohibit said regulated market from making its means of access available to remote members established in Metropolitan France and the overseas *départements* and Saint Barthélemy and Saint Martin. The Autorité des Marchés Financiers shall make its reasoned decision known to the regulated market concerned and shall promptly inform the European Commission thereof.

## Chapter III Recognised Foreign Markets

Art. L. 423-1. The public may only be approached, in whatever form and by whatever means, directly or indirectly, in connection with transactions relating to a foreign market in securities other than a regulated market of a State party to the European Economic Area Agreement, negotiable futures contracts or any other financial product, if said market has been recognised as determined by decree, and subject to reciprocity.

## Chapter IV Multilateral Trading Facilities

### Section 1 Definition; approval or authorisation of the operator

Art. L. 424-1. – A multilateral trading facility is a system which, without having regulated market status, brings together multiple third-party buying and selling interests in financial instruments in accordance with non-discretionary rules, in order to carry out transactions on said financial instruments.

It may be managed by an investment service provider authorised to provide the investment service referred to in paragraph 8 of Article L. 321-1 or, as provided for in the General Regulation of the Autorité des Marchés Financiers, by a market undertaking authorised to do so by the AMF. Paragraph III of Article L. 421-11 shall apply to market undertakings managing a multilateral trading facility.

### Section 2 Operating conditions

Art. L. 424-2. – The rules of the multilateral trading facility are determined by its operator. Said rules, which are transparent and non-discretionary, guarantee a fair and orderly trading process and set objective criteria for effective execution of the orders.

The rules of the facility, and any amendments thereto, shall be sent to the Autorité des Marchés Financiers before they are implemented. The Autorité des Marchés Financiers may object

to their implementation if it deems them incompatible with the provisions of this chapter.

The General Regulation of the Autorité des Marchés Financiers determines the manner in which the rules of the facility are published by its operator.

The provisions of Articles L. 533-11 to L. 533-16, L. 533-18 and L. 533-19 shall not apply to the use of a multilateral trading facility or to the relations between the members of the facility or to those between said members and the multilateral trading facility operator.

The General Regulation of the Autorité des Marchés Financiers sets forth the implementing provisions of this Article and, inter alia, the information to be provided to the public or to the members of the facility by the entities managing a multilateral trading facility.

A multilateral trading facility operator shall take all necessary measures to ensure efficient settlement of the transactions carried out on said facility.

Art. L. 424-3. – A multilateral trading facility operator shall take all necessary measures to verify that the members of the facility comply with its rules and to monitor the smooth processing of the transactions carried out on the facility.

It shall monitor the transactions carried out on the facility by its members in order to detect any violation of said rules, any trading event likely to disrupt the orderly operation of the market or any behaviour that may indicate price manipulation, dissemination of false information or insider dealing.

It shall inform the Autorité des Marchés Financiers of any major violations of its rules, any trading event likely to disrupt the orderly operation of the market or any behaviour which may indicate a violation referred to in the first paragraph and shall promptly send it the information required to investigate such violations. It shall afford the Autorité des Marchés Financiers all necessary assistance to investigate and prosecute the violations committed through the use of such facilities.

Art. L. 424-4. – Any entity which manages a multilateral trading facility in Metropolitan France or in the overseas *départements* or in Saint Barthélemy or Saint Martin which operates without requiring the effective presence of individuals shall inform the Autorité des Marchés Financiers of the names of the Member States of the European Community or of the other States party to the European Economic Area Agreement in which it intends to provide means of access to its facility. The Autorité des Marchés Financiers shall forward such information to the competent authority of the State concerned.

At the request of the competent authority of the multilateral trading facility's host State and within a reasonable timeframe, the Autorité des Marchés Financiers shall inform it of the identity of the members of the multilateral trading facility established in said State.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 3 Official Journal of 13 April 2007*

*Amended by Order No. 2008-698 of 11 July 2008 Art. 1 Official Journal of 16 July 2008*

### Section 3 Admission, suspension and withdrawal of financial instruments

Art. L. 424-5. – I. – The admission of a financial instrument to trading on a multilateral trading facility shall be decided by the facility operator.

The rules of the facility shall determine transparent criteria concerning the admission to trading of financial instruments.

When a financial instrument referred to in paragraph II, 1 or 2, of Article L. 211-1 which is admitted to trading on a regulated market is also traded on a multilateral trading facility without the issuer's consent, the latter shall not be bound by any disclosure obligation in regard to the facility operator.

II. – The chairman of the Autorité des Marchés Financiers or his legally appointed representative may call for the suspension or delisting of a financial instrument traded on a multilateral trading facility.

## Section 4 Rules applicable to the members

Art. L. 424-6. – The rules of the multilateral trading facility determine the conditions of admission for the facility's members in a transparent manner and on the basis of objective criteria.

The provisions of the second to sixth paragraphs of Article L. 421-17 shall apply to members of multilateral trading facilities.

If so requested by the Autorité des Marchés Financiers, the multilateral trading facility operator shall send it a list of the facility's members.

## Section 5 Pre- and after-trade transparency obligations

Art. L. 424-7. – I. – The multilateral trading facility operator shall publish the bid and offer prices and the number of financial instruments they relate to on its display systems for the shares admitted to trading on a regulated market.

Said information shall be made available to the public on a continuous basis and on reasonable commercial terms during normal trading hours.

The General Regulation of the Autorité des Marchés Financiers stipulates the circumstances in which the provisions of this article may be waived.

II. – The General Regulation of the Autorité des Marchés Financiers may also determine the information which must be made available to the public concerning financial instruments other than those referred to in the first paragraph.

Art. L. 424-8. – I. – The multilateral trading facility operator shall publish the price, the volume and the time of transactions relating to shares admitted to trading on a regulated market.

Said transactions shall be made public on reasonable commercial terms and, whenever possible, immediately.

The first paragraph shall not apply when the transactions concerned are published on the facilities of a regulated market.

The General Regulation of the Autorité des Marchés Financiers stipulates the circumstances in which the disclosure of transactions may be deferred.

II. – The General Regulation of the Autorité des Marchés Financiers may also determine the information which must be made available to the public concerning financial instruments other than those referred to in the first paragraph.

## Section 6 European multilateral trading facilities

Art. L. 424-9. – Any multilateral trading facility of another Member State of the European Community or another State party to the European Economic Area Agreement which operates without requiring the effective presence of individuals may offer the means of access to said facility in Metropolitan France and the overseas *départements*.

Art. L. 424-10. – With regard to the multilateral trading facilities of another Member State of the European Community or another State party to the European Economic Area Agreement, the Autorité des Marchés Financiers shall have powers identical to those conferred upon it by paragraph II of Article L. 422-1 in regard to the regulated markets.

## Section 7 Temporary provisions

Art. L. 424-11. – Any facility existing as of 1 November 2007 which conforms to the definition of a multilateral trading facility and is managed by a market undertaking shall be deemed authorised, provided that it complies with the provisions of this code and of the General Regulation of the Autorité des Marchés Financiers and that the market undertaking submits a request to that effect to the Autorité des Marchés Financiers not later than 30 April 2009.

## Chapter V Systematic Internalisers

Art. L. 425-1. – A systematic internaliser is an investment service provider which, in an organised, frequent and systematic manner, trades for its account by executing its clients' orders outside a regulated market or a multilateral trading facility.

Art. L. 425-2. – Systematic internalisers publish a firm price for the shares admitted to trading on a regulated market for which they have decided to perform said function and for which a liquid market exists. If their clients so request, systematic internalisers shall inform them of the prices of shares for which no liquid market exists.

The obligation imposed by the first paragraph shall apply to systematic internalisers which carry out transactions that do not exceed the standard market size. Systematic internalisers which only carry out transactions above the standard market size shall not be subject to the provisions of this article.

The General Regulation of the Autorité des Marchés Financiers sets forth the implementing provisions of this article as well as the conditions under which systematic internalisers execute their clients' orders and give access to their prices.

Art. L. 425-3. – The chairman of the Autorité des Marchés Financiers or his legally appointed representative may call for the suspension of a systematic internaliser's business on one or more shares.

Art. L. 425-4. – Investment service providers which carry on the business of a systematic internaliser must promptly inform the Autorité des Marchés Financiers of every share admitted to trading on a regulated market.

## Chapter VI Holding, Trading in and Transportation of Gold

Art. L. 426-1. The holding, transportation and trading of gold are unregulated in France.

*Numbering changed by Order No. 2007-544 of 12 April 2007 Art.. 3 Official Journal of 13 April 2007 (previously Article L. 424-1)*

## PART III TRADING IN FINANCIAL INSTRUMENTS

### Chapter III Transactions Specific to Regulated Markets

#### Section 1 Public cash offers and public exchange offers

Art. L. 433-1. - I. – In order to ensure equal treatment of shareholders and transparency of the markets, the General Regulation of the Autorité des Marchés Financiers determines the rules for offers to the public relating to financial instruments issued by a company having its registered office in France which are admitted to trading on a French regulated market.

II. – Said rules shall also apply to offers to the public of financial instruments issued by a company having its registered office in a Member State of the European Community or another State party to the European Economic Area Agreement other than France where said company's voting equity securities:

1 Are not admitted to trading on a regulated market of the State in which the company's registered office is located and

2 Were admitted to trading on a regulated market in a Member State of the European Community or another State party to the European Economic Area Agreement for the first time in France.

Where the first admission referred to in paragraph 2 took place simultaneously in several Member States of the European Community or other States party to the European Economic Area Agreement before 20 May 2006, the Autorité des Marchés Financiers shall determine the rules referred to in paragraph I where it has been declared the authority having

competence for supervising the offer by the supervisory authorities of the other Member States of the European Community concerned. Failing this, where said declaration is not forthcoming within four weeks of 20 May 2006, the Autorité des Marchés Financiers shall determine the rules referred to in paragraph I where it has been declared the authority having competence for supervising the offer by the company which is the subject of the offer.

Where the first admission referred to in paragraph 2 took place simultaneously in several Member States of the European Community or other States party to the European Economic Area Agreement after 20 May 2006, the Autorité des Marchés Financiers shall determine the rules where it has been declared competent to supervise the offer by the company which is the subject of the offer.

In the manner and under the terms stipulated in the General Regulation of the Autorité des Marchés Financiers, the company which is the subject of the offer and which declares the Autorité des Marchés Financiers to be the authority having competence for supervising the offer shall inform the AMF thereof, and the latter shall make said decision public.

III. – The General Regulation of the Autorité des Marchés Financiers determines the conditions under which the rules referred to in paragraph I shall apply to offers to the public of financial instruments issued by companies having their registered office in a country which is not a Member State of the European Community or another State party to the European Economic Area Agreement and which are admitted to trading on a French regulated market.

IV. – The General Regulation of the Autorité des Marchés Financiers may also determine the conditions under which the rules set forth in paragraph I shall apply to offers to the public of financial instruments which are admitted to trading on a market in financial instruments other than a regulated market, at the request of the market operator.

V. – Any entity in respect of which there are reasonable grounds for believing that it is preparing an offer to the public may be required to state its intentions to the Autorité des Marchés Financiers under the conditions and in the manner laid down in the latter's General Regulation. This shall be the case, in particular, when financial instruments admitted to trading on a French regulated market are the subject of significant movements.

Information concerning said declaration shall be made known to the public as determined in the General Regulation of the Autorité des Marchés Financiers.

The General Regulation determines the consequences that shall result from such a statement of intent. It stipulates, inter alia, the conditions under which the filing of a draft public offer by any entity which has, within a period set by the General Regulation of the Autorité des Marchés Financiers, denied that it intended to file such an offer, may be refused.

Art. L. 433-1-1. The General Regulation of the Autorité des Marchés Financiers also determines the conditions under which the AMF may, where more than three months have elapsed since the filing of a draft public offer for a company's securities, and after requesting the parties to submit their observations, set a final closing date for all public offers relating to said company's securities.

Art. L. 433-2. - – While an offer to the public is in progress, any measures which, if implemented, would be likely to cause the offer to fail and any restrictions on share transfers

and voting rights shall be governed by Articles L. 233-32 to L. 233-40 of the Commercial Code.

## Section 2 Obligation to file a draft public offer

Art. L. 433-3. - I. – (The General Regulation of the Autorité des Marchés Financiers determines the circumstances in which any individual or legal entity acting alone or in concert within the meaning of Article L. 233-10 of the Commercial Code who/which comes to hold, directly or indirectly, a fraction of the capital or voting rights of a company having its registered office in France and whose shares are admitted to trading on a regulated market in a Member State of the European Community or another State party to the European Economic Area Agreement, shall be required to inform the AMF thereof immediately and to file a draft public offer with a view to acquiring a given quantity of the company's securities; failing such filing, the securities the individual or legal entity holds over and above the fraction of the capital or voting rights shall be stripped of their voting rights.)

[The General Regulation of the Autorité des Marchés Financiers determines the circumstances in which an individual or a legal entity who/which is a shareholder of a company having its registered office in France and whose shares are admitted to trading on a regulated market of a Member State of the European Union or another State party to the European Economic Area Agreement, acting alone or in concert within the meaning of Article L. 233-10 of the Commercial Code, and comes to hold, directly or indirectly, more than three tenths of the capital or voting rights, or who directly or indirectly holds a number between three tenths and half of the capital or voting rights and who, in less than twelve consecutive months, increases his(her)/its holding of capital or voting rights by at least one fiftieth of the company's capital or voting rights, shall be required to inform the Autorité des Marchés Financiers thereof immediately and to file a draft public offer with a view to acquiring a given quantity of the company's securities. If said filing has not taken place, the securities held by said entity beyond three tenths or beyond its holding increased by the aforementioned fraction of one fiftieth of the capital or voting rights shall be stripped of their voting rights.]

The direct or indirect holding of a fraction of the capital or voting rights shall be assessed on the basis of Articles L. 233-7 and L. 233-9 of the Commercial Code. The General Regulation of the Autorité des Marchés Financiers determines the specific list of financial instruments or agreements referred to in paragraph I, 4, of Article L. 233-9 which must be taken into account for the determination of said holding.]

The price proposed must be at least equivalent to the highest price paid by the offerer, acting alone or in concert within the meaning of Article L. 233-10 of the Commercial Code, over the twelve-month period preceding the filing of the offer. (The Autorité des Marchés Financiers may request or authorise a change to the price proposed in the circumstances, and consistent with the criteria, specified in its General Regulation.) [The price proposed must be at least equal to the highest price paid by the offerer, acting alone or in concert within the meaning of Article L. 233-10 of the Commercial Code, during the twelve-month period which preceded the event that triggered the obligation to file a draft public offer.]

The General Regulation of the Autorité des Marchés Financiers also determines the conditions under which the AMF may grant a waiver from the obligation to file a draft public offer relating to financial instruments issued by a company having its registered office in France and whose financial instruments are admitted to trading on a regulated market in a Member State of (the European Community) [the European Union] or in another State party to the European Economic Area Agreement.

(II. - The General Regulation of the Autorité des Marchés Financiers also determines the circumstances in which an intention to acquire a block of securities that confers a majority of the capital or voting rights of a company having its registered office in France and whose shares are admitted to trading on a regulated market in a Member State of (the European Community) [the European Union] or in another State party to the European Economic Area Agreement obliges the acquirer(s) to buy the securities which are then presented to them at the rate or price at which the sale of the block is carried out.

III - The Autorité des Marchés Financiers may stipulate that the rules referred to in paragraph II shall also apply, pursuant to terms and conditions determined by its General Regulation, to financial instruments traded on any unregulated market in financial instruments in a Member State of the European Community or in another State party to the European Economic Area Agreement if the market operator so requests.

[II. – Under the terms and conditions laid down in paragraph I by the General Regulation of the Autorité des Marchés Financiers, the filing of a draft public offer shall also be mandatory where an individual or a legal entity acting alone or in concert within the meaning of Article L. 233-10 of the Commercial Code, comes to hold directly or indirectly more than five tenths of the capital or voting rights of a company having its registered office in France and whose shares are admitted to trading on a market in financial instruments which is not a regulated market in a Member State of the European Union or another State party to the European Economic Area Agreement if the said market operator makes a request to that effect to the Autorité des Marchés Financiers.]

(IV) [III]. The General Regulation of the Autorité des Marchés Financiers also determines the circumstances in which any draft public offer filed pursuant to the provisions of Section 1 of this chapter or of this section must, where the offer relates to a company which holds more than (one third) [three tenths] of the capital or voting rights of a French or foreign company whose equity securities are admitted to trading on a regulated market in a State party to the European Economic Area Agreement or an equivalent market governed by a foreign legal system and constitutes an essential part of the holder's assets, be accompanied by documents which prove that an irrevocable and fair draft public offer has been, or shall be, filed for all of said French or foreign company's capital by the opening date of the initial public offer at the latest.



### Section 3 Buyout offers and squeeze-outs

Art. L. 433-4. - I. - — The General Regulation of the Autorité des Marchés Financiers determines the conditions applicable to buyout offers and redemption requests in the following cases:

1 Where the majority shareholder(s) of a company having its registered office in France whose shares are admitted to trading on a regulated market or whose securities are no longer traded on a regulated market in a Member State of **(the European Community) [the European Union]** or another State party to the European Economic Area Agreement hold, in concert within the meaning of Article L. 233-10 of the Commercial Code, a given fraction of the voting rights;

2 Where a company having its registered office in France whose shares are admitted to trading on a regulated market in a Member State of **(the European Community) [the European Union]** or another State party to the European Economic Area Agreement takes the form of a partnership limited by shares;

3 Where the individual(s) or legal entity or entities which control, within the meaning of Article L. 233-3 of the Commercial Code, a company having its registered office in France whose shares are admitted to trading on a regulated market in a Member State of **(the European Community) [the European Union]** or another State party to the European Economic Area Agreement intend(s) to submit one or more significant amendments to the company's constitutional documents to an extraordinary General Meeting for approval concerning, inter alia, the legal form of the company, the conditions of sale and transfer of equity securities and the rights attached thereto, or decide a merger of said company **with the company that controls it or with another company controlled by the latter**, the sale or contribution to another company of all or most of the assets, the redirection of the company's business or the removal, for several financial years, of any return on equity securities. In such cases, the Autorité des Marchés Financiers shall assess the consequences of the amendment in regard to the rights and interests of the holders of equity securities or voting rights in the company to decide whether there are grounds for making a buyout offer.

II - The General Regulation of the Autorité des Marchés Financiers also determines the conditions under which, following a buyout offer or redemption request, securities not presented by the minority shareholders, provided that they do not represent more than 5% of the capital or voting rights, shall be transferred to the majority shareholders at their request, with the holders being duly compensated; the valuation of the securities, carried out in accordance with the objective methods used in the event of a sale of assets, shall take account, by means of a weighting appropriate to each case, of the value of the assets, the profits achieved, the market value, the existence of subsidiaries and the business prospects. The compensation shall be equal, per security, to the result of the aforementioned valuation or, if it is higher, to the price proposed at the time of the buyout offer or the redemption request. The amount of the compensation due to unidentified holders shall be confiscated.

III. – Without prejudice to the provisions of paragraph II, the General Regulation of the Autorité des Marchés Financiers also determines the conditions under which, at the conclusion of any public offer and for three months thereafter, any securities not presented by the minority shareholders, provided that they do not represent more than 5% of the capital or voting rights, shall be transferred to the majority shareholders at their request, and the holders shall be compensated. In the manner and under the terms laid down in the General Regulation of the Autorité des Marchés Financiers, the compensation shall be equal, per security, to the price proposed for the last offer or,

where applicable, to the result of the valuation referred to in paragraph II. Where the first public offer took place in whole or in part in the form of an exchange of securities, the compensation may consist of a settlement in securities, provided that a cash settlement is offered as an option, in the manner and under the terms stipulated in the General Regulation of the Autorité des Marchés Financiers. Where the holders of securities are not identified in the manner referred to in Article L. 228-6-3 of the Commercial Code, the compensation shall be paid in cash and the amount thereof shall be confiscated.

IV. – The General Regulation of the Autorité des Marchés Financiers also determines the circumstances in which the procedure referred to in paragraphs II and III shall apply to securities which give, or could give, access to the capital, provided that the equity securities which would be created by conversion, subscription, exchange, redemption, or in any other way, of the securities giving, or which could, give access to the capital not presented, when added to the existing equity securities not presented, do not represent more than 5% of the total number of equity securities existing and likely to be created.

**[IV. – Paragraph I, 1, and paragraphs II to IV shall also apply, in the manner and under the terms stipulated in the General Regulation of the Autorité des Marchés Financiers, to financial instruments traded on any market in financial instruments which is not a regulated market in a Member State of the European Union or another State party to the European Economic Area Agreement, if the market operator makes a request to that effect to the AMF.]**

### Section 4 Provisions applicable to companies whose financial instruments are no longer traded on a regulated market

Art. L. 433-5. – Articles L. 433-1 to L. 433-4 shall apply to companies whose financial instruments have ceased to be admitted to trading on a regulated market in order to be admitted instead to trading on a multilateral trading facility which is subject to the laws or regulations intended to protect investors from insider dealing, price manipulation and the dissemination of false information for a period of three years with effect from the date on which said financial instruments are no longer admitted to trading on a regulated market.

The preceding paragraph shall apply to companies whose market capitalisation is below one billion euros.

## PART IV CLEARING HOUSES

### Single Chapter Clearing Houses

Art. L. 441-1 and L. 441-3:

Art. L. 441-2.



Art. L. 440-1. Clearing houses supervise the positions of their members, call margins and, where applicable, liquidate positions. They must have credit-institution status. Their operational rules must have been approved by the Autorité des Marchés Financiers.

The relations between a clearing house and an entity referred to in Article L. 440-2 are of a contractual nature.

Art. L. 440-2. Only the following may become members of a clearing house:

1. Credit institutions having their registered office in a Member State of the European Community or another State party to the European Economic Area Agreement;

2. Investment firms having their registered office in a Member State of the European Community or another State party to the European Economic Area Agreement;

3. Legal entities whose members or partners are indefinitely and jointly liable for their debts and commitments, provided that said members or partners are institutions or firms referred to in paragraphs 1 and 2 above;

4. Legal entities having their registered office in Metropolitan France or in the overseas *départements* or in Saint Barthélemy or Saint Martin whose main or sole object is the clearing of financial instruments;

5. Under conditions laid down in the General Regulation of the Autorité des Marchés Financiers, credit institutions and investment firms having their registered office in a State which is not a member of the European Community or party to the European Economic Area Agreement, as well as legal entities having the clearing of financial instruments as their main or sole object which are not established in Metropolitan France or the overseas *départements* or in Saint Barthélemy or Saint Martin.

The entities referred to in paragraphs 1 to 4 are subject, for the clearing of financial instruments, to the legal and regulatory obligations and the supervisory and penalty rules stipulated for investment service providers by this code. The legal entities referred to in paragraphs 3 and 4 are subject to the rules of approval laid down for investment firms by this code. Approval for the legal entities referred to in paragraphs 1 and 2 having their registered office in Metropolitan France or in the overseas *départements* or in Saint Barthélemy or Saint Martin which wish to clear the transactions of other members of a regulated market or of a multilateral trading facility shall be granted in connection with their approval as a credit institution or investment firm.

The entities referred to in paragraph 5 must be subject in their home State to rules governing the conduct of clearing and supervision that are equivalent to those applicable in France. The Autorité des Marchés Financiers exercises the powers of supervision and sanctions with regard to those entities which this code lays down for investment service providers, taking into account the supervision provided by the competent authorities of each country concerned.

Access by credit institutions and investment firms having their registered office in a Member State of the European Community or another State party to the European Economic Area Agreement other than France shall be subject to the same non-discriminatory, transparent and objective criteria that apply to members having their registered office in France.

For legitimate commercial reasons, a clearing house may refuse access to a credit institution or an investment firm having its registered office in a Member State of the European

Community or another State party to the European Economic Area Agreement other than France.

Art. L. 440-3. – The Autorité des Marchés Financiers may prohibit access by a market undertaking or an entity managing a multilateral trading facility to a clearing house or a financial instrument settlement and delivery system of another Member State of the European Community or another State party to the European Economic Area Agreement where such prohibition is necessary to maintain the orderly operation of the regulated market or the multilateral trading facility concerned.

The Autorité des Marchés Financiers shall take account of the supervision carried out on said clearing houses or settlement and delivery systems by other competent authorities.

Art. L. 440-4. The executives and employees of clearing houses shall be bound by professional secrecy.

Art. L. 440-5. The clearing houses may decide, on a non-discriminatory basis, that their members are *del credere* agents with regard to the clients whose accounts they keep.

Art. L. 440-6. In all cases, the members of a clearing house shall undertake, in relation to the clearing house, to meet all the obligations arising from the transactions entered in their accounts on behalf of third parties. Payment of the sums thereby due cannot be deferred. Any contrary provision shall be deemed not to exist.

Art. L. 440-7. Regardless of the nature thereof, deposits made by clients with investment service providers or members of a clearing house, or made by said members with a clearing house to cover or guarantee positions taken on a market in financial instruments, shall be transferred with full title to the service provider or the member, or to the clearing house concerned, as soon as they are made, for the purpose of settlement, on the one hand, of the debit balance established upon liquidation of the positions and, on the other hand, of any other sum owed to the service provider or the member, or to said clearing house.

No creditor of a member of a clearing house, a service provider referred to in the previous paragraph, or, if applicable, the clearing house itself, may avail itself of any right whatsoever over such deposits, even on the basis of Part I or Part II of Book VI of the Commercial Code.

Art. L. 440-8. The provisions of the second paragraph of Article L. 440-7 shall also apply to any creditor of a client, any representative of a client or of a member of a clearing house, and any court-appointed administrator designated within the framework of Part I or Part II of Book VI of the Commercial Code.

The prohibitions referred to in the first paragraph of this article and the second paragraph of Article L. 440-7 shall also apply to legal proceedings and amicable procedures instituted outside France that are equivalent or similar to those referred to in Parts I and II of Book VI of the Commercial Code.

Art. L. 440-9. In the event of judicial liquidation proceedings being instituted against a member of a clearing house or of any other instance of default on the part of such a member:

1. The clearing house may have the hedges and margin deposits made with that member which relate to the positions taken by non-defaulting clients transferred to another member;

2. The clearing house may transfer to another member the positions registered with it on behalf of said member's clients, along with the hedges and margin deposits associated therewith.

Art. L. 440-10. Clearing house members may not refuse to answer inquiries made by the clearing houses in relation to their supervision of the positions, or concerning the identity, positions and solvency of the clients whose accounts they hold on grounds of professional secrecy..

## PART V INVESTOR PROTECTION

### Chapter I Transparency of the Markets

#### Section 1 Reporting obligations relating to accounts

Art. L. 451-1.

Art. L. 451-1-1. Issuers whose financial instruments other than debt securities having a denomination above €50,000, or money market instruments, within the meaning of Directive 2004/39/EC of the Parliament and of the Council of 21 April 2004 on markets in financial instruments, which have a maturity of less than twelve months and are admitted to trading on a regulated market in a State party to the European Economic Area Agreement and come within the scope of the Autorité des Marchés Financiers for the approval referred to in Article L. 621-8 must file with the AFM, as stipulated in its General Regulation and after publication of their annual accounts, a document containing or referring to all the information they have published or made public in the European Economic Area or a third country during the previous twelve months in order to meet their legal or regulatory obligations relating to financial instruments, issuers of financial instruments and markets in financial instruments.

Art. L. 451-1-2. – I. – French issuers with equity securities or debt securities having a denomination below €1,000 which are not money market instruments within the meaning of the aforementioned Directive 2004/39/EC of the Parliament and of the Council of 21 April 2004, which have a maturity of less than twelve months and are admitted to trading on a regulated market in a State party to the European Economic Area Agreement publish an annual financial report and file it with the Autorité des Marchés Financiers within four months of the end of their financial year.

Said financial report shall be made available to the public for five years under terms set forth in the General Regulation of the Autorité des marchés financiers. It shall include the annual accounts, the consolidated accounts where applicable, a management report, a statement from the individuals taking responsibility for said documents and the report of the statutory auditors on the aforementioned accounts.

II. – The General Regulation of the Autorité des Marchés Financiers also stipulates the cases in which issuers other than those referred to in paragraph I are subject to the obligation imposed by I. Those issuers are:

1 French issuers having securities giving access to the capital within the meaning of Article L. 212-7 and/or debt securities that confer the right to buy or sell any other security or giving rise to a cash settlement, inter alia, warrants or debt securities with a denomination above or equal to €1,000, which are not money market instruments within the meaning of the aforementioned Directive 2004/39/EC of the Parliament and of the Council of 21 April 2004, have a maturity of less than twelve months and are admitted to trading on a regulated market in a State party to the European Economic Area Agreement;

2 Issuers whose registered office is located outside France having securities referred to in paragraph 1 which are admitted to trading on a French regulated market;

3 Issuers whose registered office is located outside the European Economic Area having securities referred to in paragraph I which are admitted to trading on a regulated market in a State party to the European Economic Area Agreement.

III. – Issuers referred to in paragraphs I and II who are subject to the obligations described in paragraph I and have equity securities or debt securities that are admitted to trading on a regulated market in a State party to the European Economic Area Agreement shall also publish a half-yearly financial report and file it with the Autorité des Marchés Financiers within two months of the end of the first six months of their financial year.

Said half-yearly financial report shall include summary accounts for the past half-year, in consolidated form where necessary, an interim management report, a statement by the individuals taking responsibility for said documents and the statutory auditors' report on their limited review of the aforementioned accounts.

IV. – Issuers referred to in paragraphs I and II who are subject to the obligations described in paragraph I and have equity securities that are admitted to trading on a regulated market in a State party to the European Economic Area Agreement shall also publish a quarterly financial report and file it with the Autorité des Marchés Financiers within forty-five days of the end of the first and third quarters of their financial year.

Said report shall include:

1 A description of the material transactions and events that occurred during said period and their impact on the financial position of the issuer and the entities it controls;

2 A general description of the financial position and performance of the issuer and the entities it controls during said period;

3 The net turnover by business segment for the past quarter and, where applicable, **(for each of the preceding quarters of the current financial year and for the financial year as a whole) [for the current financial year as a whole]**, as well as an indication of the corresponding turnover figures for the previous financial year. Said amount shall be presented individually or, where applicable, on a consolidated basis.

V. – Without prejudice to the rules of the Commercial Code applicable to the annual accounts, the consolidated accounts, the management report, the interim management report and the statutory auditors' reports, the General Regulation of the Autorité des Marchés Financiers stipulates the content of the documents referred to in paragraphs I, III and IV.

VI. – The issuers referred to in paragraphs I and II who are subject to the obligations described in paragraph I must, within a time limit set by the General Regulation of the Autorité des Marchés Financiers, inform the Autorité des Marchés Financiers and the entities who manage regulated markets of the European Economic Area on which their securities are admitted to trading of any proposal to amend their company constitutional documents.

VII. – Without prejudice to the obligations stipulated by the Commercial Code, the General Regulation of the Autorité des Marchés Financiers determines the arrangements for publication, filing and custody of the documents and information referred to in this article.

VIII. – The Autorité des Marchés Financiers may exempt issuers whose registered office is located outside the European Economic Area from the obligations stipulated in this Article if it deems the obligations they are subject to equivalent thereto. The Autorité des Marchés Financiers shall regularly draw up and publish a list of the third-party States whose laws or regulations shall be deemed equivalent.

*Inserted by Act No. 2005-842 of 26 July 2005 Art. 32 Official Journal of 27 July 2005*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 52 Official Journal of 23 October 2010 effective 1 February 2011*

Art. L. 451-1-3. – The Autorité des Marchés Financiers shall ensure that said issuers whose registered office is located outside France who are not subject to the obligations described in Article L. 451-1-2 and whose securities referred to in paragraphs I and II of said article are admitted to trading only on a French regulated market publish the regulated information within the meaning of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, in the manner and under the terms stipulated by the General Regulation of the Autorité des Marchés Financiers.

Art. L. 451-1-4. – The obligations stipulated in Article L. 451-1-2 shall not apply to the following issuers:

1 States party to the European Economic Area Agreement and their local and regional authorities;

2 The European Central Bank and the central banks of the States referred to in paragraph 1;

3 International public sector organisations which a State referred to in paragraph 1 belongs to;

4 Issuers of debt securities unconditionally and irrevocably guaranteed by the State or by a French local or regional authority;

5 Issuers whose debt securities have a denomination above or equal to €50,000 and who have no other financial instrument referred to in paragraphs I and II of Article L. 451-1-2 which is admitted to trading on a regulated market.

*Inserted by Act No. 2005-842 of 26 July 2005 Art. 32 Official Journal of 27 July 2005*

Art. L. 451-1-5. – Where the Autorité des Marchés Financiers is not the authority with competence for verifying compliance with the reporting obligations stipulated in Articles L. 451-1-1 and L. 451-1-2 of this code and Articles L. 233-7 to L. 233-9 of the Commercial Code and it has established said the issuer or the entity required to provide the information indicated in paragraph I of Article L. 233-7 of the Commercial

Code has not complied with its reporting obligations, it shall inform the supervisory authority of the State party to the European Economic Area Agreement with competence for verifying compliance with such reporting obligations.

If, despite the measures taken by said authority, or on account of their inadequacy, the issuer, the financial institutions responsible for the placement or the entity required to provide the information indicated in paragraph I of Article L. 233-7 of the Commercial Code should continue to fail to comply with the laws or regulations that apply to them, the Autorité des Marchés Financiers may, after informing the authority with competence for verifying compliance with said reporting obligations, take all necessary measures to protect investors.

The Autorité des Marchés Financiers shall inform the European Commission of such measures.

Art. L. 451-1-6. - The French Directorate of Official Journals (Direction des Journaux officiels, DJO) provides central storage for regulated information pursuant to Article 21 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004. An order of the Prime Minister stipulates the conditions of access and use by the public of the information thus stored.

## Section 2 Reporting obligations relating to equity investments

Art. L. 451-2. The rules relating to the reporting of significant equity investments are laid down in Articles L. 233-7 to L. 233-14 of the Commercial Code, reproduced hereunder:

*Article L233-7. - I - Where the shares of a company having its registered office in France are admitted to trading on a regulated market in a State party to the European Economic Area Agreement or a market in financial instruments which permits trading in shares which may be entered in the books of an authorised intermediary as provided for in Article L211-3 of the Monetary and Financial Code, any individual or legal entity, acting alone or jointly, who comes into possession of a number of shares representing more than one twentieth, one tenth, three twentieths, one fifth, one quarter, [three tenths of] one third, one half, two thirds, eighteen twentieths or nineteen twentieths of the capital or voting rights shall inform the company of the total number of shares or voting rights it holds within a time limit determined in a decree issued following consultation with the Conseil d'Etat commencing on the day on which the equity participation threshold was exceeded..*

*The information specified in the previous paragraph shall also be reported, within the same time limit, where the equity participation or voting rights fall below the thresholds indicated in said paragraph.*

*The individuals or legal entities required to provide the information referred to in the first paragraph shall also indicate in their declaration:*

*a) The number of securities they hold which give deferred access to the shares to be issued and the voting rights that will be attached thereto;*

*b) The shares already issued that said individuals or legal entities may acquire by virtue of an agreement or a financial instrument referred to in Article L. 211-1 of the Monetary and Financial Code, without prejudice to the*

provisions of paragraph I, 4, of Article L. 233-9 of this code. The same shall apply to any voting rights that said individuals or legal entities may acquire in the same way;

c) The shares already issued to which any agreement or financial instrument referred to in Article L. 211-1 of the Monetary and Financial Code relates, settled exclusively in cash and having for said individuals or legal entities an economic impact similar to the holding of said shares. The same shall apply to the voting rights to which any agreement or financial instrument relates in the same circumstances (1).

II.- The individuals or legal entities required to provide the information referred to in paragraph I shall also inform the *Autorité des Marchés Financiers*, within a time limit and under terms and conditions determined in its General Regulation, as soon as the participation threshold is exceeded, where the company's shares are admitted to trading on a regulated market or on a market in financial instruments other than a regulated market, at the request of the entity managing said market in financial instruments. In the latter case, the information may relate to only a portion of the thresholds referred to in paragraph I, as determined in the General Regulation of the *Autorité des Marchés Financiers*. Said information shall be made known to the public as determined in the General Regulation of the *Autorité des Marchés Financiers*.

The General Regulation also specifies the method for calculating participation thresholds and the circumstances in which an agreement or financial instrument referred to in paragraph I, c, shall be deemed to have an economic impact similar to the holding of shares.

III - The company's constitutional documents may impose an additional reporting obligation relating to the holding of fractions of the capital or voting rights below the one twentieth referred to in paragraph I. The obligation relates to the holding of each such fraction, which cannot be below 0.5% of the capital or voting rights.

IV.- The reporting obligations stipulated in paragraphs I, II and III shall not apply to:

1 Shares acquired solely for the purposes of clearing, settling or delivering financial instruments within the framework of the regular short-term settlement cycle described in the General Regulation of the *Autorité des Marchés Financiers*;

2 Shares held by book-keeping custodians in connection with their book-keeping and custodial activities;

3 Shares held in the trading portfolio of an investment service provider within the meaning of Directive 2006/49/EC of the Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions, provided that such shares do not represent a percentage of the capital or voting rights of their issuer above a threshold set in the General Regulation of the *Autorité des Marchés Financiers* and that the voting rights attached to those securities are not exercised or otherwise used to participate in the issuer's management;

4 Shares lodged with members of the European System of Central Banks, or lodged by them in the performance of their duties as monetary authorities, as

determined in the General Regulation of the *Autorité des Marchés Financiers*.

V.-The reporting obligations stipulated in paragraphs I, II and III shall not apply:

1 To a market maker when the threshold of one twentieth of the capital or voting rights is exceeded in connection with market making, provided that it does not participate in the issuer's management within the meaning of the General Regulation of the *Autorité des Marchés Financiers*;

2 Where the market maker referred to in paragraph I is controlled, within the meaning of Article L. 233-3, by an entity subject to the obligation laid down in paragraphs I to III for the shares held by said market maker or if said entity is itself controlled, within the meaning of Article L. 233-3, by an entity subject to the obligation laid down in paragraphs I to III for those same shares.

VI.- In the event of the reporting obligation referred to in paragraph III not being complied with, the company's constitutional documents may provide for the provisions of the first two paragraphs of Article L. 233-14 to apply only if requested and subject to this being duly recorded in the minutes of the General Meeting by one or more shareholders holding a fraction of the capital or voting rights of the issuing company at least equal to the smallest capital holding which must be declared. Said fraction shall nevertheless not exceed 5%.

VII.- Where the company's shares are admitted to trading on a regulated market, the entity required to provide the information indicated in paragraph I shall also declare, when the thresholds of one tenth, three twentieths, one fifth or one quarter of the capital or voting rights are exceeded, the objectives that it intends to pursue during the next six months.

Said declaration shall indicate whether the buyer is acting alone or in concert, whether he/it envisages making further acquisitions, whether he/it is seeking to acquire a controlling interest in the company, its planned strategy in relation to the issuer and the arrangements for its implementation, as well as any temporary assignment agreement relating to the shares and the voting rights. It shall also indicate whether the buyer intends to seek directorships for himself/itself or for one or more other individuals or legal entities, or seats on the Executive Board or the Supervisory Board. The General Regulation of the *Autorité des Marchés Financiers* stipulates the content of said items, taking account, where applicable, of the level of the participating interest and the particulars of the individual or legal entity making the declaration.

The declaration shall be sent to the company whose shares have been bought and must reach the *Autorité des Marchés Financiers* within time limits set by a decree issued following consultation with the *Conseil d'Etat*.

Such information shall be made known to the public as determined in the General Regulation of the *Autorité des Marchés Financiers*.

If said stated objectives change within six months of submission of said declaration, a new declaration explaining the reasons for the change must be promptly sent to the company and to the *Autorité des Marchés Financiers* and made known to the public in the same way. Said new declaration shall reopen the six-month period referred to in the first subparagraph.



*Amended by Order No. 2009-105 of 30 January 2009*

(1) Order No. 2009-105 of 30 January 2009 Art 6: the provisions introduced by Article 2, 1, of this Order shall enter into force nine months after its publication in the Official Journal.

*Amended by Act No.2010-1249 of 22 October 2010 Art. 49 and 50 OJ of 23 October2010*

*Act No. 2010-1249 of 22 October 2010 Article 92: Article 50 of this act enters into force on 01/02/2011*

Article L233-7-1 - Where the company's shares have ceased to be admitted to trading on a regulated market because they are admitted to trading on a multilateral trading facility which is subject to the laws or regulations intended to protect investors from insider dealing, price manipulation and the dissemination of false information, the individual or legal entity required to provide the information indicated in paragraph I of Article L. 233-7 shall also inform the Autorité des Marchés Financiers, within a time limit and under terms and conditions determined in its General Regulation, as soon as the participation threshold is exceeded, for a period of three years with effect from the date on which said shares ceased to be admitted to trading on a regulated market. Said information shall be made known to the public as determined in the General Regulation of the Autorité des Marchés Financiers.

The preceding paragraph shall apply to companies whose market capitalisation is below one billion euros.

Paragraph VII of Article L. 233-7 shall also apply to the individual or legal entity referred to in the first paragraph of this article.

Created by Act No. 2009-1255 of 19 October 2009, Article 11

Article L. 233-8. I - Within fifteen days at most of an ordinary General Meeting, all joint-stock companies shall inform their shareholders, of the total number of voting rights existing on said date. If, between two ordinary General Meetings, the number of voting rights varies by a percentage determined by order of the Minister for the Economy in relation to the number previously declared, the company shall inform its shareholders on becoming aware thereof.

II.- Under terms and conditions determined in the General Regulation of the Autorité des Marchés Financiers, companies referred to in paragraph I of Article L. 233-7 having shares which are admitted to trading on a regulated market in a State party to the European Economic Area Agreement publish the total number of voting rights and the number of shares that make up the company's capital each month if they have varied in relation to those previously published. Such companies shall be deemed to have met the obligation referred to in paragraph I.

Amended by Act No. 2007-1774 of 17 December 2007, Article 10

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 55 OJ of 23 October2010*

Article L233-9 - I.- The following shall be treated as shares or voting rights held by the individual or legal entity required to provide the information referred to in the first paragraph of Article L. 233-7:

1 Shares or voting rights held by other individuals or legal entities on behalf of said individual or legal entity;

2 Shares or voting rights held by the companies controlled by said individual or legal entity within the meaning of Article L. 233-3;

3 Shares or voting rights held by a third party with whom said individual or legal entity acts jointly;

4 Shares already issued which said individual or legal entity, or an individual or legal entity referred to in paragraphs 1 to 3 is entitled to acquire on his/its own initiative, immediately or eventually, by virtue of an agreement or a financial instrument referred to in Article L. 211-1 of the Monetary and Financial Code. The same shall apply to the voting rights that said individual or legal entity may acquire in the same way. The General Regulation of the Autorité des Marchés Financiers specifies this paragraph's implementing provisions;

5 Shares in respect of which said individual or legal entity is the usufructuary;

6 Shares or voting rights held by a third party with whom said individual or legal entity has entered into a temporary assignment agreement covering those shares or voting rights;

7 Shares lodged with said individual or legal entity, provided that it may exercise the voting rights attached to them as it sees fit in the absence of specific instructions from the shareholders;

8 The voting rights which said individual or legal entity may freely exercise by virtue of a power of attorney in the absence of specific instructions from the shareholders concerned.

II. The following shall not be treated as shares or voting rights held by the individual or legal entity required to provide the information referred to in the first paragraph of Article L. 233-7:

1 Shares held by collective investment undertakings or SICAFs managed by a portfolio management company controlled by said individual or legal entity within the meaning of Article L. 233-3, as provided for in the General Regulation of the Autorité des Marchés Financiers, barring any exceptions provided for in said regulation;

2 Shares held in a portfolio managed by an investment service provider controlled by said individual or legal entity within the meaning of Article L. 233-3, in the context of a portfolio management service for third parties as provided for in the General Regulation of the Autorité des Marchés Financiers, barring any exceptions provided for in said regulation;

3 Financial instruments referred to in paragraph I, 4, held in the trading portfolio of an investment service provider within the meaning of Directive 2006/49/EC of the Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions, provided that such instruments do not represent a percentage of the capital or voting rights of their issuer above a threshold set in the General Regulation of the Autorité des Marchés Financiers.

*Amended by Order No. 2009-105 of 30 January 2009, Article 3*

*Article L233-10 - I. - Individuals or legal entities who/which have entered into an agreement with a view to buying or selling voting rights or with a view to exercising voting rights to implement a policy in relation to the company shall be deemed to be acting in concert.*

*II. - Such an agreement shall be presumed to exist:*

*1 Between a company, the chairman of its Board of Directors and its general managers or the members of its Executive Board or its executives;*

*2 Between a company and the companies it controls within the meaning of Article L. 233-3;*

*3 Between companies controlled by the same individual(s) or legal entity(ies);*

*4 Between the partners in a simplified joint-stock company in relation to the companies it controls.*

*5 Between the trustee and the beneficiary of a fiduciary contract, if the beneficiary is the grantor.*

*III. – Individuals or legal entities acting in concert shall be jointly and severally bound by the obligations imposed on them by the laws and regulations.*

*Amended by Act 2007-211 of 19 February 2007 Art.. 18 1 OJ of 21 February 2007*

*Amended by Act No.2010-1249 of 22 October 2010 Official Journal of 23 October 2010*

*Article L233-10-1- Individuals or legal entities who/which have entered into an agreement with the initiator of a takeover bid with a view to securing control of the company which is the subject of the bid shall be deemed to be acting in concert. Individuals or legal entities who/which have entered into an agreement with the company which is the subject of the bid in order to cause the bid to fail shall also be deemed to be acting in concert.*

*Created by Act No. 2006-387 of 31 March 2006 – Art. 4 OJ of 1 April 2006*

*L. 233-11 - Any clause in an agreement which allows preferential terms and conditions to be applied to the sale and purchase of shares admitted to trading on a regulated market representing at least 0.5% of the capital or voting rights of the company which issued said shares must be submitted to the company and to the Autorité des Marchés Financiers within five trading days of the signing of the agreement or the addendum containing the clause concerned. Failing such submission, the effects of said clause shall be suspended and the parties shall be released from their commitments while an offer to the public is in progress.*

*The company and the Autorité des Marchés Financiers must also be informed of the date on which the clause lapses.*

*Clauses in agreements entered into before the date of publication of Act No. 2001-420 of 15 May 2001, relating to the new economic regulations, which have not been submitted to the Autorité des Marchés Financiers by said date must be sent to it within six months in the same way and with the effects indicated in the first paragraph.*

*The information referred to in the preceding paragraphs shall be made known to the public as prescribed by the General Regulation of the Autorité des Marchés Financiers."*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 OJ of 2 August 2003*

*Article L233-12-*

*. - Where a company is directly or indirectly controlled by a joint-stock company, it shall notify the latter and all companies participating in said control of the amount of the equity interests it directly or indirectly holds in each of them, and likewise any variations in said amount.*

*The notifications shall be given within one month of either the date where the assumption of control became known to the company with regard to the shares which it held before said date, or the date of the transaction for subsequent acquisitions or disposals.*

*Article L233-13 - Based on the information received pursuant to Articles L. 233-7 and L. 233-12, the report presented to the shareholders on the business during the accounting period shall indicate the identity of any individual or legal entity directly or indirectly holding more than one twentieth, one tenth, three twentieths, one fifth, one quarter, one third, one half, two thirds, eighteen twentieths or nineteen twentieths of the authorised capital or voting rights at General Meetings. It shall also indicate any changes which took place during said period and the names of the controlled companies and the portion of the company's capital held by them. This shall be noted, where applicable, in the auditors' report."*

*Amended by Act No. 2007-1774 of 17 December 2007 Art. 10*

*Article L233-14 -A shareholder who has not properly made the declaration referred to in paragraphs I and II of Article L. 233-7 or paragraph VII of this Article shall be stripped of the voting rights attached to the shares in excess of the fraction which has not been properly declared for any shareholders' meeting held within two years of the date of effective notification.*

*In the same circumstances, the voting rights attached to those shares which have not been properly declared cannot be exercised or delegated by the defaulting shareholder.*

*The Commercial Court having jurisdiction at the place where the company has its registered office may, after seeking the opinion of the Public Prosecutor, and at the request of the company's chairman, a shareholder or the Autorité des Marchés Financiers, order a total or partial suspension of voting rights, for a period not exceeding five years, against any shareholder who has not made the declarations referred to in Article L. 233-7 or who has failed to observe the content of the declaration referred to in paragraph VII of said article during the six-month period following its publication as stipulated in the General Regulation of the Autorité des Marchés Financiers."*

*Amended by Order No. 2009-105 of 30 January 2009 Art..*

Art. L. 451-2-1. - The information referred to in paragraph I of Article L. 233-7 of the Commercial Code shall also be provided where the company has its registered office outside the European Economic Area and the Autorité des Marchés Financiers has competence for monitoring its compliance with the obligation stipulated in Article L. 451-1-1 of this code. Paragraphs II, IV, V and VII of Article L. 233-7, and Articles L. 233-8, L. 233-9, L. 233-10, L. 233-10-1, L. 233-11 and L. 233-12 of the Commercial Code shall then apply.

The Autorité des Marchés Financiers may exempt an individual or legal entity holding equity investments in a company having its registered office outside the European Economic Area from the reporting obligations referred to in paragraph I of Article L. 233-7 of the Commercial Code if it deems the obligations said individual or legal entity is subject to under the third-party State's relevant legislation to be equivalent.

The Autorité des Marchés Financiers may exempt a company having its registered office outside the European Economic Area from the obligations laid down in paragraph II of Article L. 233-8 of the Commercial Code if it deems the obligations said company is subject to under the legislation of the third-party State in which it has its registered office to be equivalent.

The Autorité des Marchés Financiers shall draw up, update and publish a list of the third-party States whose laws or regulations are deemed equivalent to the obligations described in paragraph I of Article L. 233-7 and paragraph II of Article L. 233-8 of the Commercial Code.

### Section 3 Reporting obligation relating to the redemption of shares

Art. L. 451-3. The share redemptions referred to in Article L. 225-209 of the Commercial Code shall not be subject to the provisions of paragraph VII of Article L. 621-8 of this code.

Under terms and conditions laid down in the General Regulation of the Autorité des Marchés Financiers, any company having shares admitted to trading on a regulated market which wishes to redeem its own equity securities shall inform the market prior to so doing.

## Chapter II Investors' Defence Associations

Art. L. 452-1. Properly declared associations having as their explicit purpose, as defined in their company constitutional documents, the defence of investors in financial securities or financial products may bring legal proceedings before any court, even through the filing of civil actions, in relation to facts which cause direct or indirect prejudice to the collective interests of investors in general or to certain categories of investors.

Said associations are:

- approved associations, as determined by decree after seeking the opinion of the Public Prosecutor and the Autorité des Marchés Financiers, where they can prove six months' existence and, throughout said period, at least two hundred members paying their contributions individually and where

their executives meet conditions of respectability and competence determined by decree;

- associations which meet the criteria for holding voting rights defined in Article L. 225-120 of the Commercial Code, if they have sent their company constitutional documents to the Autorité des Marchés Financiers.

Where a practice contrary to the laws or regulations is likely to compromise the rights of investors, the shareholders' associations referred to in the first paragraph may apply to the court for an order compelling the individual or legal entity responsible to comply with said provisions and end the irregularity or eliminate its effects.

The application shall be brought before the presiding judge of the regional court having jurisdiction at the place where the company has its registered office, who shall give an immediately enforceable summary ruling. The presiding judge shall be competent to hear and determine objections of illegality. He may, even without consultation, take any protective measure and impose a coercive fine payable to the Trésor public for execution of his order.

Art. L. 452-2. Where, in their capacity as investors, several individuals have suffered individual damage having a common origin through the actions of the same entity, any association referred to in Article L. 452-1 may, if it has been instructed by at least two of the investors concerned, sue for damages before any court on behalf of said investors.

The power so to act cannot be solicited via a public appeal on television or radio, nor via a poster campaign, leaflets or personalised letters. It must be given in writing by each investor.

However, if an association approved pursuant to the third paragraph of Article L. 452-1 brings an action for damages before the civil or commercial courts, the presiding judge of the regional court or the Commercial Court, as applicable, may issue a summary order authorising it to seek a power of attorney from the shareholders empowering it to act on their behalf and, at its own expense, to have recourse to the means of publication referred to in the previous paragraph.

Without prejudice to the provisions of Articles L. 612-1 to L. 612-5 of the Commercial Code, the associations referred to in the previous paragraph shall draw up a balance sheet, a profit and loss account and notes to the accounts each year, the scope and presentation of which are determined by decree and approved by the meeting of members. Where the association brings an action pursuant to the previous paragraph, it shall send said documents to the presiding judge.

Art. L. 452-3. Any investor having given his agreement, as provided for in Article L. 452-2, for the bringing of an action before a criminal court shall be considered in such circumstances to be exercising the rights granted to a private party under the Code of Criminal Procedure. Notices and notifications concerning the investor shall be sent to the association, however.

Art. L. 452-4. An association bringing a legal action pursuant to Articles L. 452-2 and L. 452-3 may join the criminal proceedings before the investigating judge or the court having jurisdiction over the registered office or domicile of the entity against whom the proceedings are brought, or, failing that, over the place where the first offence was committed.

## Part VI

# CRIMINAL PROVISIONS

### Chapter I

Art. L. 461-1.

### Chapter II Offences relating to Regulated Markets

*Art. L. 462-1.* Art. L. 462-2. The sanctions applicable to advertising for subscriptions to securities are laid down in Article L. 245-2 of the Commercial Code.

NB: Article L. 245-2 of the Commercial Code was repealed by Article 122 2 of Act No. 2001-420 of 15 May 2001.

### Chapter III Offences relating to Trading in Financial Instruments

### Chapter IV Offences relating to Market Undertakings and Clearing Houses

Art. L. 464-1. The sanctions imposed by Article 226-13 of the Criminal Code shall apply in the event of any executive or employee of a clearing house violating the professional secrecy instituted by Article L. 440-4, without prejudice to the provisions of Article 226-14 of the Criminal Code.

Art. L. 464-2. - The sanctions imposed by Article 226-13 of the Criminal Code shall apply in the event of any member of the administrative, management and supervisory bodies, or any executive or employee of a market undertaking violating the professional secrecy instituted by Article L. 421-8, without prejudice to the provisions of Article 226-14 of the Criminal Code.

### Chapter V Offences relating to Investor Protection

#### Section 1 Violations of the transparency of the markets

Art. L. 465-1. Executives of a company referred to in Article L. 225-109 of the Commercial Code, or individuals who, in the course of their business or the performance of their functions, obtain inside information concerning the prospects or the situation of an issuer whose securities are traded on a regulated market or the likely performance of a financial instrument or an asset referred to in paragraph II of

**Article L. 421-1** which is admitted to trading on a regulated market, and either directly or through an intermediary, carry out or facilitate one or more transactions before the public has knowledge of said information shall incur a penalty of two years' imprisonment and a fine of 1,500,000 euros, which amount may be increased to a figure representing up to ten times the amount of any profit realised and shall never be less than the amount of said profit..

Whoever, through the practice of his profession or the performance of his functions, obtains inside information concerning the prospects or the situation of an issuer whose securities are traded on a regulated market or the likely performance of a financial instrument **or an asset referred to in paragraph II of Article L. 421-1** which is admitted to trading on a regulated market and discloses said information to a third party outside the normal framework of his profession or his functions shall incur a penalty of one year's imprisonment and a fine of 150,000 euros.

Any individual, other than those referred to in the previous two paragraphs, who knowingly obtains inside information concerning the situation or the prospects of an issuer whose securities are traded on a regulated market or the likely performance of a financial instrument **or an asset referred to in paragraph II of Article L. 421-1** which is admitted to trading on a regulated market, and either directly or indirectly carries out or facilitates a transaction or discloses said information, or allows it to be disclosed, to a third party before the public has knowledge thereof, shall incur a penalty of one year's imprisonment and a fine of 150,000 euros, which amount may be increased to a figure representing up to ten times the amount of the profit realised and shall never be less than the amount of said profit. Where the information in question is used in the commission of a crime or an offence, the sentence shall be increased to seven years' imprisonment and a fine of 1,500,000 euros if the amount of the profit realised is below said figure.

Art. L. 465-2. The penalties imposed by the first paragraph of Article L. 465-1 shall also apply to whoever carries out or attempts to carry out, directly or through an intermediary, a deliberate act intended to impede the normal operation of a regulated market by misleading others.

The penalties imposed by the first paragraph of Article L. 465-1 shall apply likewise to whoever publicly disseminates, via whatever ways and means, any false or misleading information concerning the prospects or the situation of an issuer whose securities are traded on a regulated market, or the likely performance of a financial instrument or an asset referred to in paragraph II of Article L. 421-1 which is admitted to trading on a regulated market, which might affect the price thereof.

Art. L. 465-3. Legal entities declared criminally liable, as provided for in Article 121-2 of the Criminal Code, for the offences described in Articles L. 465-1 and L. 465-2 shall incur, in addition to the fine provided for in Article 131-38 of the Criminal Code, the sanctions imposed by Article 131-39 of said code.

The disqualification referred to in paragraph 2 of Article 131-39 of the Criminal Code shall relate to the activity in connection with which, or in parallel with which, the offence was committed.

#### Section 2 Equity investments

Art. L. 465-4. The sanctions applied to offences relating to the reporting obligation for significant equity investments are determined in paragraphs I and III, 1 and 2, of Articles L. 247-1 and L. 247-2 of the Commercial Code, reproduced hereunder:

*"Article L. 247-1 I. - If the chairman, directors, general managers or executives of any company:*

*1 Do not indicate in the annual report presented to the members on the business during the accounting period an equity investment in a company having its registered office in France which represents more than one twentieth, one tenth, one fifth, one third, one half or two thirds of the capital or voting rights at the General Meetings of said company, or the acquisition of control of such a company;*

*2 Do not, in that same report, record the business and performance of the whole company, its subsidiaries and the companies it controls by sector of activity,*

*this shall incur a penalty of two years' imprisonment and a fine of 9,000 euros*

*III. - If the auditor does not indicate in his report the information referred to in paragraph I, 1, of this article, he shall incur the penalty referred to in paragraph I.*

*Amended by Order No. 2000-916 of 19 September 2000 Art 3 (V) Official Journal of 22 September 2000*

*Article L247-2 I.- A chairman, director, Executive Board member, executive or general manager of a legal entity, or any individual, who fails to comply with the reporting obligations for which said entity is responsible pursuant to Article L. 233-7 on account of the equity interests it holds, shall incur a fine of €18,000.*

*II - The same penalty shall apply to a chairman, director, Executive Board member, executive or general manager of a company who fails to give the notifications which said company is required to give pursuant to Article L. 233-12 on account of the equity interests it holds in the joint-stock company which controls it.*

*III - The same penalty shall apply to a chairman, director, Executive Board member, executive or general manager of a company who, in the report presented to the shareholders on the business during the accounting period, fails to indicate the identity of individuals or legal entities who hold significant equity interests in said company, any changes which occurred during the accounting period and the names of the controlled companies and the portion of the company's capital held by said companies, as determined in Article L. 233-13.*

*IV. - The fact of the auditor failing to include in his report the items referred to in paragraph III shall incur the same penalty.*

*V. - For companies whose shares are admitted to trading on a market in financial instruments referred to in paragraph II of Article L. 233-7, proceedings shall be instituted after the opinion of the Autorité des Marchés Financiers has been sought.*

*Amended by Order No. 2009-80 of 22 January 2009 Art. 8*

## Chapter VI Common Provisions

Art. L. 466-1. - The courts which hear proceedings relating to offences committed by companies whose financial securities are admitted to trading on a regulated market or are offered to the public on a multilateral trading facility which is subject to the laws or regulations intended to protect investors from insider dealing, price manipulation and the dissemination of false information, or from offences committed in connection with transactions on a market in financial instruments **or assets referred to in paragraph II of Article L. 421-1**, may request the opinion of the Autorité des Marchés Financiers at any stage in the proceedings. Said opinion must be requested where the proceedings are instituted pursuant to Article L. 465-1.





## BOOK V THE SERVICE PROVIDERS

Article L. 500-1. I- No one shall, either directly or indirectly, for their own account or on behalf of another, if they have been the subject of a final judgement referred to in paragraph II within the previous ten years:

1 Manage or administer, or be a member of the collegiate organ of control of, an entity referred to in Articles L. 213-8, L. 511-9, L. 517-1, L. 517-4, L. 522-1, L. 531-1, L. 542-1 and L. 543-1, or have signing authority on behalf of such an entity;

2 Practice a profession or carry on a business activity referred to in Articles L. 341-1, L. 519-1, L. 523-1, L. 524-1, L. 541-1 and L. 550-1.

II. - The sentences referred to in paragraph I are those:

1 For criminal offences;

2 For a term of imprisonment without remission or of at least six months suspended, for:

a) An offence covered by Part I of Book III of the French Criminal Code or an offence covered by special laws punished with the penalties imposed for fraud and breach of trust;

b) Possession or handling of stolen goods or a similar offence covered by Section 2 of Chapter 1 of Part II of Book III of the Criminal Code;

c) Money laundering;

d) Bribery or acceptance or solicitation of bribes, influence peddling, misappropriation and fraudulent conversion of property;

e) Forgery, falsification of securities or other fiduciary instruments issued by the public authorities, falsification of official marks;

f) Participation in an association of criminals;

g) Drug trafficking;

h) Procuring or an offence covered by Sections 2 and 2 bis of Chapter V of Part II of Book II of the Criminal Code;

i) An offence covered by Section 3 of Chapter V of Part II of Book II of the Criminal Code;

j) A violation of the commercial companies legislation set forth in Part IV of Book II of the Commercial Code (Code du Commerce);

k) Bankruptcy;

l) Granting loans at usurious rates of interest;

m) An offence covered by the law of 21 May 1836 prohibiting lotteries, the law of 15 June 1907 relating to casinos and Act No. 83-628 of 12 July 1983 relating to games of chance;

n) An offence against the laws and regulations relating to foreign financial dealings;

o) Tax fraud;

p) An offence covered by Articles L. 121-6, L. 121-28, L. 122-8 to L. 122-10 and L. 213-1 to L. 213-5, L. 217-1 to L. 217-3, L. 217-6 and L. 217-10 of the French Consumer Code;

q) An offence covered by this code;

r) An offence covered by Articles L. 8222-1, 2, 3 and 5 and 8224-1 and 2 of the French Labour Code;

s) Abuses of the automated processing systems referred to in Chapter III of Part II of Book III of the Criminal Code;

t) An offence against the insurance laws or regulations;

3 That entail dismissal from duties as a public officer or a law official.

III- The incapacity referred to in paragraph I, 1 shall apply to any individual in respect of whom a final personal bankruptcy measure or other final prohibitory measure provided for in Book VI of the Commercial Code has been decided.

IV- Without prejudice to the provisions of the second paragraph of Article 132-21 of the Criminal Code, the court handing down the decision giving rise to such incapacity may reduce the term thereof.

V- Individuals performing duties, or engaged in a business or profession, referred to in paragraph I who are sentenced as provided for in paragraphs II and III must cease their activities within one month of the date on which the court decision became final. Said period may be reduced or eliminated by the court handing down the decision.

VI- Where a final judgement is pronounced by a foreign court for an offence which, under French law, constitutes a criminal offence or an offence referred to in paragraph II, the criminal court of the convicted individual's domicile shall declare, at the request of the Public Prosecutor and after verifying the correctness and legality of the conviction and having duly heard the individual concerned in closed session, that there are grounds for applying the incapacity referred to in paragraph I.

Said incapacity shall also apply to any undischarged personal bankrupt so declared by a foreign court whose adjudication in bankruptcy has been declared enforceable in France. In such specific instances only, the Public Prosecutor may enter the application for an enforcement order at the Regional Court (Tribunal de Grande Instance) of the convicted individual's domicile.

VII. - The fact of an individual not being subject to the incapacity referred to in this article shall not preclude verification, by the competent authority, of his compliance with the approval criteria or with his authorisation to practice.

*Inserted by Order No. 2005-429 amending the Monetary and Financial Code Art. 1 Official Journal of 7 May 2005*

*Amended by Act No. 2006-437 of 14 April 2006 which introduces various provisions relating to tourism (Art. 7 IV 2) Official Journal of 15 April 2006: Art. 7 VII. -*

*Amended by Order No. 2007-329 of 12 March 2007 Art. 12 Official Journal of 13 March 2007*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 9 and 10 Official Journal of 16 July 2009*

# PART I BANKING SECTOR INSTITUTIONS

## CHAPTER I

### SECTION I

Article L. 511-1. - Credit institutions are legal entities having as their customary activity the carrying out of banking transactions within the meaning of Article L. 311-1. They may also carry out transactions related to their activities within the meaning of Article L. 311-2.

Article L. 511-2. - Credit institutions may, moreover, under conditions set forth by the Minister for the Economy, acquire and hold equity interests in firms which already exist or are in the process of being formed.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 VI 1 Official Journal of 2 August 2003*

Article L. 511-3. - Credit institutions may engage regularly in business activities other than those referred to in Articles L. 311-1, L. 311-2 and L. 511-2 only in circumstances determined by the Minister for the Economy.

Such transactions must, in any event, remain limited relative to the institution's activities overall and must not impede, restrict or distort free competition on the relevant market.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 VI 1 Official Journal of 2 August 2003*

Article L. 511-4. - Articles L. 420-1 to L. 420-4 of the Commercial Code shall apply to credit institutions in respect of their banking transactions and transactions closely linked to banking transactions described in Article L. 311-2 and to payment institutions in respect of their payment services and closely related services described in Article L. 522-2. Violations of said provisions shall be prosecuted under the conditions set forth in Articles L. 442-5, L. 443-2, L. 443-3, L. 462-5 to L. 462-8, L. 463-1 to L. 463-7, L. 464-1 to L. 464-8, and L. 470-1 to L. 470-8 of the Commercial Code. The statement of complaint referred to in Article L. 463-2 of said code shall be sent to the Autorité de Contrôle Prudentiel, which shall give its opinion within two months. In the event of the Autorité de la Concurrence imposing a penalty upon completion of the procedure referred to in Articles L. 463-2, L. 463-3 and L. 463-5 of the Commercial Code, it shall indicate, where applicable, why it does not concur with the opinion of the Autorité de Contrôle Prudentiel.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 24 I Official Journal of 2 August 2003*

*Amended by Act No. 2008-776 of 4 August 2008 Art. 96 Official Journal of 5 August 2008*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 9 Official Journal of 16 July 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 5 Official Journal of 22 January 2010*

Article L. 511-4-1. - The institutions referred to in this chapter shall indicate in their annual report the amount and particulars of the loans they finance or distribute which come within the definition given in paragraph III of Article 80 of Act

No. 2005-32 of 18 January 2005 on social cohesion and thus have the benefit of public guarantees.

*Inserted by Order No. 2010-737 of 1 July 2010 Art. 24 Official Journal of 2 July 2010 effective 1 September 2010 under terms determined by decree*

### Section 2 Prohibitions

Article L. 511-5. - It is prohibited for any entity other than a credit institution to carry out banking transactions on a regular basis.

It is, moreover, prohibited for any entity other than a credit institution to receive on-demand deposits or term deposits of less than two years from the public.

Article L. 511-6. - Without prejudice to the specific provisions applicable thereto, the prohibitions referred to in Article L. 511-5 shall not apply to the institutions and units enumerated in Article L. 518-1, to companies governed by the French Insurance Code, to reinsurance companies, to the approved bodies which are subject to the provisions of Book II of the French Mutuality Code for the transactions referred to in Article L. 111-1(1, e) of said code, to investment firms, to payment institutions, to the bodies that collect the employers' contribution to building efforts for transactions that come under the French Building and Housing Code, to securitisation schemes, to undertakings for collective investment in transferable securities (organismes de placement collectif en valeurs mobilières, OPCVM) or to collective real-estate investment schemes (organismes de placement collectif immobilier, OPCI).

The prohibition relating to credit transactions shall not apply to:

1 Non-profit organisations which, in the context of their activities and for social reasons, grant loans from their own resources on preferential terms to some of their nationals;

2 Organisations which, for the transactions indicated in Article L. 411-1 of the Building and Housing Code, and only as an adjunct to their construction business or the services they render, grant first-time homebuyers deferred payment of the price of the dwellings they purchase or subscribe to;

3 Firms which grant advances against salaries and wages or loans of an exceptional nature to their employees for social reasons;

5. Non-profit associations and the foundations which are registered charities that grant loans from their own resources and from borrowings to create, develop and acquire firms whose salaried workforce does not exceed a threshold set by decree or to enable individuals to carry out social integration projects.

Said associations and foundations are not authorised to offer financial instruments to the public. They may finance their activities from facilities borrowed from credit institutions and from the institutions or units referred to in L. 518-1, and also from individuals who have been duly informed of the risks incurred. Loans granted by individuals do not bear interest and must have a term of at least two years.

Said associations and foundations are authorised as stipulated in a decree issued following consultation with the Conseil d'Etat. They shall indicate in their annual report the amount and particulars of the loans they finance or distribute which come within the definition given in paragraph III of Article 80 of Act No. 2005-32 of 18 January 2005 on social cohesion and thus have the benefit of public guarantees.

6 Legal entities for equity loans they grant by virtue of Articles L. 313-13 to L. 313-17, as well as legal entities referred to

in Article L. 313-21-1 for issuance of the guarantees referred to in that article.

*Amended by Act No. 2001-420 of 15 May 2001 Art. 19 Official Journal of 16 May 2001*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 35, Art. 58 3 Official Journal of 2 August 2003*

*Amended by Act No. 2005-842 of 26 July 2005 Art. 18 Official Journal of 27 July 2005*

*Amended by Order No. 2005-1278 of 13 October 2005 Art. 5 Official Journal of 14 October 2005*

*Amended by Order No. 2008-556 of 13 June 2008 Art. 16 Official Journal of 14 June 2008*

*Amended by Act No. 2008-776 of 4 August 2008 Art. 35et 81 Official Journal of 5 August 2008*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 9 Official Journal of 16 July 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 3 Official Journal of 22 January 2010*

*Amended by Order No. 2010-737 of 1 July 2010 Art. 25 Official Journal of 2 July 2010 effective 1 September 2010 under terms determined by decree*

Article L. 511-7. I. - The prohibitions indicated in Article L. 511-5 do not prevent a firm, regardless of its type, from:

1 Granting its contracting parties deferred payment terms or advances in the normal course of its business dealings;

2 Entering into leases for dwellings that include an option to purchase;

3 Carrying out cash transactions with firms that have direct or indirect capital links with it that confer on one of the linked firms effective control of the others;

4. Issuing financial securities;

5. Issuing payment instruments delivered in order to purchase a specific item of property or a service from itself or from firms linked to it under a commercial franchise agreement;

6 Allocating cash to guarantee a financial instruments transaction or a securities lending transaction governed by the provisions of Articles L. 211-36 and L. 211-36-1;

7. Entering into repurchase and reverse repurchase agreements on financial instruments and public bills referred to in Articles L. 211-27 and L. 211-34.

II. - The Autorité de Contrôle Prudentiel may exempt a firm providing banking payment services from authorisation for the acquisition of goods or services in said firm's premises or under a commercial agreement with it applicable to a limited network of entities accepting said banking payment services or for a limited range of goods or services.

To grant exemption, the Autorité de Contrôle Prudentiel must, inter alia, take account of the security of the means of payment, the measures taken to ensure user protection, the denomination and the terms of each transaction.

Where the firm having the benefit of exemption manages, or makes available, means of payment in the form of electronic currency:

The maximum load capacity of the electronic medium made available to the bearers for payment purposes cannot exceed an amount determined by order of the Minister for the Economy;

An activity report, the content of which is determined by order of the Minister for the Economy, is sent to the Banque de France each year.

*Amended by Act No. 2001-420 of 15 May 2001 Art. 29 IV Official Journal of 16 May 2001*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 70 1 Official Journal of 2 August 2003*

*Amended by Order No. 2009-15 of 8 January 2009 Art. 4 Official Journal of 9 January 2009*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 9 Official Journal of 16 July 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Article L. 511-8. - Any firm that is not a credit institution is prohibited from using a trade name, corporate name, advertising or, more generally, any wording, which might imply that it is an authorised credit institution or which could create confusion in that regard.

A credit institution is prohibited from giving the impression that it belongs to a category other than that for which it received approval, and from creating confusion in that regard.

## Section 3 Conditions of access to the profession

### Subsection 1 Approval

Article L. 511-9. - Credit institutions are approved as a bank, a mutual or cooperative bank (banque mutualiste ou coopérative), a municipal credit bank (Caisse de Crédit Municipal), a finance company (société financière) or a specialised financial institution (institution financière spécialisée).

Only the banks, the mutual or cooperative banks and the municipal credit banks are generally authorised to receive on-demand deposits or term deposits of less than two years from the public.

Banks may carry out all banking transactions.

Mutual or cooperative banks and municipal credit banks may carry out all banking transactions consistent with the limitations that result from the laws and regulations that govern them.

Article L. 511-10. - Before commencing their activities, credit institutions must obtain the approval from the Autorité de Contrôle Prudentiel referred to in Article L. 612-1(II, 1).

The Autorité de Contrôle Prudentiel shall check whether the firm meets the requirements indicated in Articles L. 511-11, L. 511-13 and L. 511-40 and the suitability of its legal form for the business of a credit institution. It takes account of the firm's programme of operations, the technical and financial facilities it intends to implement, the quality of the contributors of capital and, where applicable, their guarantors.

The committee also assesses the applicant firm's ability to realise its development plans in conditions compatible with the proper functioning of the banking system and adequate client security.

In determining its approval criteria, the Autorité de Contrôle Prudentiel may take the specificity of certain credit institutions in the social economic sector into account. It assesses, inter alia, the significance of their activities with regard to the public interest duties associated with combating exclusion or the effective recognition of a right to credit.

The Autorité de Contrôle Prudentiel may limit its approval to the carrying out of certain transactions specified in the applicant's corporate purpose.

The Autorité de Contrôle Prudentiel may attach special conditions to the approval intended to maintain the balance of the institution's financial structure and the proper functioning of the banking system, taking into account, where applicable, the objectives of the additional supervision referred to in Chapter VII of Part I of Book V of this code. It may also make the granting of approval subject to compliance with undertakings given by the applicant institution.

The Autorité de Contrôle Prudentiel may refuse to grant approval if performance of the supervisory function in relation to the applicant firm is likely to be impeded either by the existence of ownership links or of direct or indirect control between the firm and other individuals or legal entities, or by the existence of laws or regulations of a State which is not party to the European Economic Area Agreement which one or more of said legal entities or individuals is/are governed by.

The Autorité de Contrôle Prudentiel may, moreover, refuse approval if the individuals referred to in Article L. 511-13 do not possess the requisite respectability and competence or appropriate relevant experience.

*Amended by Act No. 2001-420 of 15 May 2001 Art. 7 i 1, 2, Art. 9, Art. 10 1 Official Journal of 16 May 2001*

*Amended by Order No. 2004-1201 of 12 November 2004 Art. 5a Official Journal of 16 November 2004*

*Amended by Order No. 2009-897 of 24 July 2009 Art. 1 Official Journal of 25 July 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 5 Official Journal of 22 January 2010*

***Amended by Act No. 2010-1249 of 22 October 2010 Art. 12 Official Journal of 23 October 2010***

Article L. 511-11. - Credit institutions must have paid-up capital or a paid allocation of an amount at least equal to a sum determined by the Minister for the Economy.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 VI 1 Official Journal of 2 August 2003*

Article L. 511-12. - Where a firm governed by the law of a State which is not a member of the European Community applies, pursuant to paragraph 1 of Article L. 611-1, to take an equity holding in a credit institution or an investment firm which would have the effect of making the latter its subsidiary, or where a direct or indirect subsidiary of such a firm applies to the Autorité de Contrôle Prudentiel for approval, the Autorité de Contrôle Prudentiel shall limit or suspend its decision if the Council or the Commission of the European Community so requests after establishing that credit institutions or investment firms having their registered office in a Member State do not have access to that third State's market or do not benefit from the same treatment there as credit institutions having their registered office in that State.

Where the Autorité de Contrôle Prudentiel limits or suspends its decision as provided for in the previous paragraph, the approval granted by the competent authority of a European Economic Area Member State which is not a member of the European Community has no legal effect in France during the period of limitation or suspension and the provisions of Articles L. 511-21 to L. 511-28 do not apply to the institutions concerned.

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 52 Official Journal of 7 May 2005*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Article L. 511-12-1. - I. – Changes in the distribution of a credit institution's capital must be reported to the Autorité de Contrôle Prudentiel.

Direct or indirect acquisitions of, or increases in, equity interests in a credit institution must be authorised by the Autorité de Contrôle Prudentiel.

Where a reduction in, or sale of, a direct or indirect holding is reported to it, the Autorité de Contrôle Prudentiel shall check to ensure that said transaction does not affect the portfolio management company's capacity to meet the conditions stipulated for its approval.

A decree issued following consultation with the Conseil d'Etat determines, inter alia, the assessment criteria that the Autorité de Contrôle Prudentiel shall apply to the transactions referred to in the second paragraph. The terms of the procedures referred to in this paragraph I are set forth in the order referred to Article L. 611-1.

II. – Any other change to the conditions attached to an approval granted to a credit institution shall require, as applicable, prior authorisation from the Autorité de Contrôle Prudentiel, a report or a notification, as determined by order of the Minister for the Economy.

In cases in where an authorisation must be granted, it too may have special conditions attached to it for the purposes of the sixth paragraph of Article L. 511-10, or may be contingent upon compliance with undertakings given by the institution concerned.

*Amended by Act No. 2001-420 of 15 May 2001 Art. 7 I 3 Official Journal of 16 May 2001*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 25 I, Art. 46 VI 2 Official Journal of 2 August 2003*

*Amended by Act No. 2008-776 of 4 August 2008 Art. 96 Official Journal of 5 August 2008*

*Amended by Act No. 2008-776 of 4 August 2008 Art. 96 Official Journal of 5 August 2008*

*Amended by Order No. 2009-897 of 24 July 2009 Art. 1 Official Journal of 25 July 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Article L. 511-13. - The principal administrative establishment of any credit institution required to obtain such authorisation must be located within the same national territory as its registered office.

The effective determination of the general orientation of a credit institution's business must be decided by at least two individuals, who must at all times meet the conditions set forth in Article L. 511-10.

Credit institutions having their registered office abroad shall designate at least two individuals to whom they entrust the effective determination of the activities of their branch in France.

*Amended by Act No. 2001-420 of 15 May 2001 Art. 10 2 Official Journal of 16 May 2001*

Article L. 511-13-1. - Without prejudice to the provisions of Article L. 229-4 of the Commercial Code, the Autorité de Contrôle Prudentiel also has the power, pursuant to the provisions of Article 8 (14) and Article 19 of Council Regulation (EC) No. 2157/2001 of 8 October 2001 on the Statute for a European company (SE), to oppose the transfer of the registered office of a credit institution created as a European company registered in France which would result in a change in the applicable law, and to oppose the creation of a European company through a merger involving a credit institution approved in France. Such decisions shall be appealable before the Conseil d'Etat.

*Inserted by Act No. 2005-842 of 26 July 2005 Art. 13 Official Journal of 27 July 2005*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*



Article L. 511-13-2. - Without prejudice to the provisions of Article 26-6 of Act No. 47-1775 of 10 September 1947 on the cooperative charter, the Autorité de Contrôle Prudentiel has the power, pursuant to paragraph 14 of Article 7 and to Article 21 of Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE), to oppose the transfer of the registered office of a credit institution constituted in the form of a European cooperative society registered in France where said transfer would give rise to a change of the applicable law, and to oppose the formation of a European cooperative society through a merger involving a cooperative credit institution approved in France. Said decision shall be appealable before the Conseil d'Etat.

*Inserted by Act No. 2008-649 of 3 July 2008 Art. 19 Official Journal of 4 July 2008*

Article L. 511-14. - The Autorité de Contrôle Prudentiel shall make its decision within twelve months of receiving the application for approval. Any refusal of approval shall be notified to the applicant.

The Autorité de Contrôle Prudentiel shall prepare and update a list of the credit institutions which shall be published in the Official Journal of the French Republic.

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Article L. 511-15. - The withdrawal of approval shall be pronounced by the Autorité de Contrôle Prudentiel at the request of the institution. It may also be decided by the Autorité de Contrôle Prudentiel without consultation if the institution no longer meets the conditions nor fulfils the undertakings which its approval or a subsequent authorisation was contingent upon, or if the institution did not make use of its authorisation within twelve months or has not traded for at least six months.

The withdrawal of authorisation shall take effect upon expiry of a period determined by the Autorité de Contrôle Prudentiel.

During said period:

1. The credit institution shall remain subject to the supervision of the Autorité de Contrôle Prudentiel and, where applicable, of the Autorité des Marchés Financiers. The Autorité de Contrôle Prudentiel may impose the disciplinary sanctions indicated in Article L. 612-39 on it, including delisting;

2. The institution may carry out only the banking transactions, investment services and payment services which are strictly necessary to settle its affairs and must limit the other activities referred to in paragraphs 1 to 6 of Article L. 311-2 and in Articles L. 511-2 and L. 511-3;

3 It may refer to its credit-institution status only to state that its approval is in the process of being withdrawn.

*Amended by Act No. 2001-420 of 15 May 2001 Art. 7 4<sup>e</sup> Official Journal of 16 May 2001*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 9 Official Journal of 16 July 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 5 Official Journal of 22 January 2010*

Article L. 511-16. - In the case referred to in Article L. 511-15, the funds received from the public referred to in Article L. 312-2, insofar as they may be regularly received only by a credit institution, and likewise any securities issued by that institution which are not tradable on a regulated market, shall be redeemed by the institution on their due dates or, where the due date falls after expiry of the period referred to in the second paragraph of Article L. 511-15, on the date determined by the Autorité de Contrôle Prudentiel. Upon expiry of said period, the firm shall

lose its credit-institution status and must have changed its corporate name. Banking transactions other than receipts of funds from the public and the payment services which the firm entered into or undertook to enter into before the decision to withdraw authorisation was taken may run their normal course.

As an exception to the provisions of paragraphs 4 and 5 of Article 1844-7 of the French Civil Code, the early dissolution of a credit institution cannot be pronounced until its approval has been withdrawn by the Autorité de Contrôle Prudentiel. As an exception to Articles L. 123-1 and L. 237-3 of the Commercial Code, the publication and the amending entry in the Trade and Companies Register (Registre du Commerce et des Sociétés) concerning the pronouncement of said dissolution must indicate the date of the Autorité de Contrôle Prudentiel's decision to withdraw authorisation. Until the close of the liquidation proceedings, the institution shall remain subject to the supervision of the Autorité de Contrôle Prudentiel, which may impose all the sanctions referred to in Article L. 613-21 of this code. It shall not refer to its credit-institution status without indicating that it is in liquidation.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 74 1 Official Journal of 2 August 2003*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 9 Official Journal of 16 July 2009*

Article L. 511-17. - The Autorité de Contrôle Prudentiel may order the delisting of a credit institution from the list of approved credit institutions as a disciplinary measure.

Delisting shall entail the liquidation of the legal entity where its registered office is in France. For the branches of institutions having their registered office outside the European Economic Area, said delisting shall entail liquidation of the branch's balance-sheet items and of its off-balance-sheet items. In order to protect the clients' interests, the Autorité de Contrôle Prudentiel may postpone said liquidation until expiry of a period which it shall determine.

Any institution which has been delisted shall remain subject to the Autorité de Contrôle Prudentiel's supervision until the close of the liquidation proceedings. It may carry out only the transactions which are strictly necessary to settle its affairs. It shall not refer to its credit-institution status without stating that it is in liquidation.

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Article L. 511-18. - The Minister for the Economy shall determine the implementing provisions of Articles L. 511-15 to L. 511-17. He shall also determine, inter alia, the manner in which:

1 Decisions to withdraw authorisation or to delist shall be made known to the public;

2 In addition to the right to avail itself of the other legal means of assignment and enforceability against third parties, the assignment of the debts resulting from the credit transactions referred to in Article L. 313-1 may be made binding on third parties through the written consent of the debtor or by a decision of the Autorité de Contrôle Prudentiel;

3 Home savings plans and accounts, company savings plans, popular savings plans and passbook accounts, equity-linked savings plans and commitments by signature may be transferred, without prejudice to the rights of the holders or of the beneficiaries, to one or more other credit institution(s);

4 Financial instruments entered in the institution's books may be transferred to another investment service provider or to the issuer;

5. The transactions envisaged in paragraphs 1 to 6 of Article L. 311-2 and in Articles L. 511-2 and L. 511-3 shall be limited.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 VI 1 Official Journal of 2 August 2003*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 9 Official Journal of 16 July 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Article L. 511-19. - Where credit institutions having their registered office abroad open offices to provide information or liaison or representation services, the Autorité de Contrôle Prudentiel must be given prior notice of the opening of said offices.

Said offices may display the trade name or the corporate name of the credit institution they represent.

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Article L. 511-20. - I. - A firm which is under exclusive control within the meaning of Article L. 233-16 of the Commercial Code or under a dominant influence through the existence of major and enduring interdependence links deriving from financial commitments or common directors or departments is a subsidiary of a credit institution, an investment firm, a financial holding company or a mixed financial holding company.

II- The fact of directly or indirectly holding at least 20% of a firm's voting rights or capital, or a block of rights in a firm's capital, which, by creating an enduring link with that firm, is bound to contribute to its business, constitutes an equity interest.

III- A group consists of a parent firm, its subsidiaries and the entities in which the parent firm or its subsidiaries hold equity interests, as well as entities which are linked on account of their administrative, management or supervisory organs being predominantly composed of the same individuals or through being placed under the same management by virtue of a contract or their company constitutional documents. The institutions affiliated with a network and a central body within the meaning of Article L. 511-31 shall be deemed to form part of a single group for the purposes of this code. The same applies to entities belonging to cooperative groups governed by the similar provisions of the legislation applicable to them.

IV- The term "financial conglomerate" shall mean the group formed by the direct or indirect subsidiaries of a credit institution, an investment firm or a financial holding company, and by the firms of a financial kind over which the parent firm exercises joint control within the meaning of Article L. 233-16 of the Commercial Code.

The firms of a financial nature referred to in the previous paragraph are described in the applicable regulations.

V- The term "mixed group" shall mean the group formed by the direct or indirect subsidiaries of a parent firm which is not a financial holding company, a credit institution, an investment firm or a mixed financial holding company within the meaning of Article L. 517-4 but which has at least one subsidiary which is a credit institution or an investment firm. The parent firm of a mixed group is a mixed company.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 VI 1 Official Journal of 2 August 2003*

*Amended by Order No. 2004-1201 of 12 November 2004 Art. 5 b Official Journal of 16 November 2004*

## Subsection 2 Freedom of establishment and freedom to provide services in the States party to the European Economic Area Agreement

Article L. 511-21. - In this subsection:

1. The term "banking service" shall mean a banking transaction within the meaning of Article L. 311-1 or one of the related activities within the meaning of Article L. 311-2;

2. The term "competent authorities" shall mean one or more authorities within a Member State which are responsible, pursuant to that State's legislation, for authorising or supervising credit institutions having their registered office there;

3. The term "service provided under freedom to provide services" shall mean an activity through which a credit institution or a financial institution provides, in a Member State other than that in which its registered office is located, a banking service other than through a permanent presence in that Member State;

4. The term "financial institution" shall mean a company which is not authorised as a credit institution in a State in which its registered office is located and which has as its principal activity, concurrently or otherwise:

a) One or more activities referred to in 1, 3, 4, 5 and 7 of Article L. 311-2;

b) The acquisition of equity holdings in firms having as their principal activity the carrying out of banking transactions or which are engaged in one of the aforementioned activities;

c) For a company having its registered office in a State party to the European Economic Area Agreement other than France, the carrying out of banking transactions within the meaning of Article L. 311-1, with the exception of receiving funds from the public.

5. States party to the European Economic Area Agreement are treated in the same way as Member States of the European Community other than France.

*Amended by Order No. 2009-866 of 15 July 2009 Art. 9 Official Journal of 16 July 2009*

Article L. 511-22. - Within the compass of the services it is authorised to provide in a Member State other than France in which its registered office is located, and consistent with the authorisation it has received there, any credit institution may, within the territory of Metropolitan France and the Overseas *départements*, establish branches to provide banking services and freely provide services as envisaged in Article L. 511-24, subject to the Autorité de Contrôle Prudentiel having been informed thereof beforehand by the competent authority of the Member State, as determined by the Minister for the Economy.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 VI 1 Official Journal of 2 August 2003*

*Amended by Order No. 2008-698 of 11 July 2008 Art. 1 Official Journal of 16 July 2008*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Article L. 511-23. - Within the compass of the services it is authorised to provide in a Member State other than France in which its registered office is located, any financial institution that has obtained an attestation from the competent authorities of that Member State certifying that it meets the conditions required for that purpose by said authorities may, within the territory of Metropolitan France and the Overseas *départements*, establish branches to provide banking services and freely provide services as envisaged in Article L. 511-24, subject to the Autorité de

Contrôle Prudentiel having been informed thereof beforehand by the competent authority of the Member State, as stipulated by the Minister for the Economy.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 VI 1 Official Journal of 2 August 2003*

*Amended by Order No. 2008-698 of 11 July 2008 Art. 1 Official Journal of 16 July 2008*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Article L. 511-24. - The institutions referred to in Articles L. 511-22 and L. 511-23 and their branches in France are not subject to the provisions of Articles L. 511-10, L. 511-11, L. 511-14, L. 511-35, L. 511-38, L. 511-39 and L. 511-40.

They are not subject to the orders of the Minister for the Economy, save for the provisions of said regulations which have not been the subject of coordination between the Member States, where they are beneficial to the general public or where they relate to the monetary policy or the institutions' cash reserves.

The Minister for the Economy shall determine the provisions of the regulations which are applicable by virtue of this article.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 VI 1, 2 Official Journal of 2 August 2003*

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 53 Official Journal of 7 May 2005*

Article L. 511-25. - For the purpose of supervising an institution having the benefit of the scheme referred to in Article L. 511-24, and as an exception to the provisions of Article 1 Bis of Act No. 68-678 of 26 July 1968, the competent authorities that supervise said institution may require it and its branches in France to send them all information relevant to that supervision and, subject to them having given the Autorité de Contrôle Prudentiel prior notice thereof, may, either themselves or through the intermediary of individuals duly empowered by them for such purpose, conduct on-the-spot inspections at that institution's branches in France.

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Article L. 511-26. - The institutions referred to in Articles L. 511-22 and L. 511-23 are subject to the supervision of the Autorité de Contrôle Prudentiel as referred to in Article L. 613-33.

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Article L. 511-27. - Any credit institution having its registered office in France and wishing to establish a branch in another Member State must send its plan to the Autorité de Contrôle Prudentiel, together with information as specified by the Minister for the Economy.

Unless the Autorité de Contrôle Prudentiel, on the basis of said plan, has reservations regarding the adequacy of the credit institution's administrative structures or financial situation, it shall forward such information to the competent authority of the host State and shall inform the institution concerned thereof within three months of receiving it in due form.

If the Autorité de Contrôle Prudentiel refuses to forward the information referred to in the first paragraph to the competent authority of the host State, it shall inform the institution concerned of the reasons for said refusal within three months of receiving said information in due form.

Credit institutions having their registered office in France and wishing to conduct their business in another Member State for

the first time under freedom to provide services shall be required to declare this to the Autorité de Contrôle Prudentiel. Said report shall be accompanied by information as specified by the Minister for the Economy.

The Minister for the Economy shall determine the circumstances in which the information referred to in the previous paragraphs is forwarded to the competent authority of the other Member State.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 VI 1 Official Journal of 2 August 2003*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Article L. 511-28. - Any financial institution having its registered office in France and wishing to establish a branch in another Member State in order to offer banking services under freedom of establishment must send its plan to the Autorité de Contrôle Prudentiel, together with the information specified by the Minister for the Economy.

The financial institution must also prove to the Autorité de Contrôle Prudentiel that it is meeting the conditions laid down by the Minister for the Economy. Said conditions relate to the activities carried out by such institutions in France, the manner in which they are placed under the control of credit institutions and the rules applied to ensure the quality and supervision of their management and to guarantee that the parent firms underwrite their commitments.

If the institution meets the conditions referred to in the previous paragraph, the Autorité de Contrôle Prudentiel shall, unless it has reservations regarding the adequacy of the credit institution's administrative structures or financial situation, send the information concerning the plan to the competent authority of the host State within three months of receiving it and shall inform the institution concerned thereof.

Financial institutions wishing to conduct their business in another Member State for the first time under freedom to provide services shall be required to make a report to that effect to the Autorité de Contrôle Prudentiel.

They must also show that they meet the conditions referred to in the second paragraph of this article.

Financial institutions conducting their business in another Member State under the provisions of this article shall be subject to the provisions of Articles L. 511-13, L. 511-33 and L. 511-39, and also to the orders approved by the Minister for the Economy for those among them which envisage the scope of their activities encompassing said category of institutions. It shall be supervised by the Autorité de Contrôle Prudentiel under the conditions set forth in Articles L. 612-1 and L. 612-23 to L. 612-27; it may be the object of the measures and sanctions referred to in Articles L. 511-41-3, L. 612-30 to L. 612-34 and L. 612-39. The delisting referred to in paragraph 7 of Article L. 612-39 must be understood as the withdrawal of the benefit of the scheme referred to in this article.

A decree issued following consultation with the Conseil d'Etat shall determine the implementing provisions of this article and of Article L. 511-27, as and where necessary.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 III 7, VI 1 Official Journal of 2 August 2003*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 12 Official Journal of 23 October 2010*

## Section 4 Professional bodies

### Sub-section 1 The Association Française des Établissements de Crédit et des Entreprises d'Investissement and other professional organisations

Article L. 511-29. - All credit institutions are required to belong to a professional body or a central body affiliated with the Association Française des Établissements de Crédit et des Entreprises d'Investissement.

However, the Minister for the Economy may authorise certain specialised financial institutions to be direct members of said association.

The object of the Association Française des Établissements de Crédit et des Entreprises d'Investissement is to represent the collective interests of the credit institutions, the payment institutions and the investment firms in relation, inter alia, to the public authorities, to provide information to its members and to the public, to examine any question of common interest and to make recommendations thereon with a view, where appropriate, to encouraging cooperation between networks and the organisation and management of services of common interest. It is also tasked with drawing up conduct of business rules applicable to the credit institutions and investment firms in preparation for their approval as provided for in Article L. 611-3-1.

The Association Française des Établissements de Crédit et des Entreprises d'Investissement may also enter into consultations with their sector's representative trade unions on the general questions that concern all credit institutions, payment institutions and investment firms.

Its company constitutional documents shall be subject to ministerial approval.

*Amended by Order No. 2008-1271 of 5 December 2008 Art. 1 Official Journal of 6 December 2008*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 9 Official Journal of 16 July 2009*

### Subsection 2 Central bodies

Article L. 511-30. - For the provisions of this code that relate to credit institutions, the following shall be deemed to be central bodies: Crédit Agricole S.A., the central body of savings banks and popular banks, and the Confédération Nationale du Crédit Mutuel.

*Amended by the Act of 15 May 2001 art 27, known as NRE Official Journal of 16 May 2001*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 93 III Official Journal of 2 August 2003*

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 54 Official Journal of 7 May 2005*

*Amended by Order No. 2006-1048 of 25 August 2006 Art. 7 Official Journal of 26 August 2006*

*Amended by Act No. 2009-715 of 18 June 2009 Art. 1 and 2 Official Journal of 19 June 2009*

Article L. 511-31. - The central bodies represent the credit institutions affiliated with them in relation to the Banque de France and the Autorité de Contrôle Prudentiel.

They are responsible for ensuring the cohesiveness of their network and the correct functioning of the institutions affiliated with them. To this end, they shall take all necessary measures to ensure the liquidity and solvency of each said institution and of the entire network. They may also decide to prohibit or limit the distribution of dividends to the shareholders or the remuneration of the shares of the credit institutions or investment firms affiliated with them.

Where directly or indirectly held by a central body within the meaning of Article L. 511-30, the securities referred to in the last paragraph of Article 19 ter of Act No. 47-1775 of 10 September 1947 on the cooperative charter shall not be taken into account for calculation of the threshold of 50% of the capital of the credit institutions affiliated with them referred to in the aforementioned Article 19 ter.

They oversee the application of the laws and regulations specific to said institutions and exercise administrative, technical and financial control over the organisation and management thereof. The on-the-spot inspections of the central bodies may be extended to their direct or indirect subsidiaries and also to those of the institutions affiliated with them.

Within the scope of said powers, they may apply the penalties provided for in the laws and regulations which are specific to them.

The central body shall notify any loss of affiliated-institution status to the Autorité de Contrôle Prudentiel and the latter shall make a decision concerning the institution in question's approval.

For the purposes of Section 2 of Chapter V of Part II of Book II of the Commercial Code, each corporate remit held in the central body, within the meaning of Article L. 511-30 of this code, or in the credit institutions affiliated with it, shall be counted as a single remit.

After informing the Autorité de Contrôle Prudentiel thereof and without prejudice to the powers of the Autorité de Contrôle Prudentiel, the central bodies may, where the financial situation of the institutions concerned so warrants, and notwithstanding any legal or contractual provision to the contrary, decide to merge two or more of the legal entities affiliated with them, with a total or partial sale of their assets and their dissolution. The senior manager structures of the legal entities concerned must have been consulted by the central bodies beforehand. The latter shall be responsible for the liquidation of the credit institutions affiliated with them or the total or partial sale of their goodwill.

The central bodies notify any decision concerning affiliation or withdrawal of affiliation to the institution concerned and to the Autorité de Contrôle Prudentiel.

*Amended by Act No. 2001-420 of 15 May 2001 Art. 28 Official Journal of 16 May 2001*

*Amended by Act No. 2002-1303 of 29 October 2002 Art. 4 Official Journal of 30 October 2002*

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 55 Official Journal of 7 May 2005*

*Amended by Act No. 2006-1770 of 30 December 2006 Art. 42 Official Journal of 31 December 2006*

*Amended by Act No. 2009-715 of 18 June 2009 Art. 1 Official Journal of 19 June 2009-*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 5 Official Journal of 22 January 2010*

Article L. 511-32. - Without prejudice to the powers conferred on the Autorité de Contrôle Prudentiel for carrying out on-site document inspections in the institutions affiliated with them, each of the central bodies contributes, in its own specific field, to application of the laws and regulations governing the credit institutions.



To that end, they shall refer violations of said provisions to the Autorité de Contrôle Prudentiel.

*Amended by Act No. 2006-387 of 31 March 2006 Art. 26 Official Journal of 1 April 2006*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

## Section 5 Professional secrecy

Article L. 511-33. - Any member of a Board of Directors and, where applicable, of a Supervisory Board, and any individual who, in whatever capacity, participates in the management or administration of a credit institution or of an entity referred to in paragraph 5 of Article L. 511-6, or who is employed by such an entity, shall be bound by professional secrecy.

In addition to the cases envisaged by the law, professional secrecy cannot be raised against the Autorité de Contrôle Prudentiel, the Banque de France or a court acting within the scope of criminal proceedings.

Credit institutions may, moreover, send information covered by professional secrecy, on the one hand to the rating agencies for the purpose of rating financial instruments and, on the other hand, to the entities with which they negotiate, enter into or execute the transactions indicated below, whenever such information is needed for said transactions:

1 Credit transactions carried out, directly or indirectly, by one or more credit institutions;

2 Transactions in financial instruments, guarantees or insurance intended to cover a credit risk;

3 Acquisition of an equity interest or a controlling interest in a credit institution or an investment firm;

4 Assignments of assets or of goodwill;

5 Assignments or transfers of receivables or of contracts;

6 Service contracts entered into with a third party with a view to entrusting major operational duties to said party;

7 Where any type of contract or transaction is under consideration or is being worked on, provided that said entities belong to the same group as the originator of the communication.

In addition to the cases indicated above, credit institutions may send information covered by professional secrecy on a case by case basis but only when the entities concerned have expressly consented to them so doing.

Entities receiving information covered by professional secrecy which has been provided to them for the purposes of a transaction referred to above must preserve its confidentiality, even if the aforementioned transaction does not take place. In the event of the aforementioned transaction being entered into, however, said entities may, in their turn, disclose the information covered by professional secrecy under conditions identical to those referred to in this article, to the entities with which they negotiate, enter into or execute the transactions referred to above.

*Replaced by Act No. 2008-776 of 4 August 2008 Art. 154 Official Journal of 5 August 2008*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Article L. 511-34. - Firms established in France which form part of a financial group or, for the purposes of paragraph 2 of this article, of a group within the meaning of Articles L. 322-1-2,

L. 322-1-3 and L. 334-2 of the Insurance Code, Articles L. 111-4-2 and L. 212-7-1 of the Mutuality Code and L. 933-2 of the French Social Security Code, or of a mixed group or a financial conglomerate which includes credit institutions or investment firms having their registered office in a Member State of the European Community or a State party to the European Economic Area Agreement or a State in which the agreements referred to in Articles L. 632-7, L. 632-13 and L. 632-16 of this code apply, shall be required, notwithstanding any provision to the contrary, to send to firms in the same group having their registered office in one of said States:

1 The information relating to their financial situation which is needed to organise the supervision of said credit institutions or investment firms on a consolidated basis and also their additional supervision;

2 The information required to combat money laundering and terrorist financing.

3 The information required to organise detection of the insider deals or price manipulation referred to in Article L. 621-17-2;

4 The information required to resolve conflicts of interest within the meaning of paragraph 3 of Article L. 533-10.

The latter information cannot be communicated to entities outside the group, with the exception of the competent authorities of the States referred to in the first paragraph. This exception does not extend to the authorities of States or territories whose legislation is seen to be inadequate or whose practices are deemed to impede the prevention of money laundering or of terrorist financing by the international body for cooperation and coordination in the prevention of money laundering, the list of which is updated by order of the Minister for the Economy.

The entities receiving such information shall be bound by professional secrecy under the terms and subject to the penalties set forth in Article L. 511-33 in respect of all information or documents which they might receive or hold.

The provisions of this article shall not impede application of Act No. 78-17 of 6 January 1978 on data processing, files and individual liberties.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 72 1 Official Journal of 2 August 2003*

*Amended by Order No. 2004-1201 of 12 November 2004 Art. 5 c Official Journal of 16 November 2004*

*Amended by Order No. 2007-1490 of 18 October 2007 Art. 3 Official Journal of 19 October 2007*

*Amended by Order No. 2007-1490 of 18 October 2007 Art. 4 Official Journal of 19 October 2007*

*Amended by Act No. 2008-776 of 4 August 2008 Art. 155 Official Journal of 5 August 2008*

*Amended by Order No. 2010-737 of 1 July 2010 Art. 29 Official Journal of 2 July 2010*

## Section 6: Accounting provisions

### Subsection 1 Corporate accounts and accounting records

Article L. 511-35. - The provisions of Articles L. 232-1 and L. 232-6 of the Commercial Code apply to all credit institutions and investment firms as determined by the French accounting standards authority (Autorité des Normes Comptables, ANC) following consultation with the Comité Consultatif de la Législation et de la Réglementation Financières.



**The fifth paragraph of Article L. 225-102-1 of said code shall apply to credit institutions, investment firms and financial holding companies, regardless of their legal form.\***

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 III 8 Official Journal of 2 August 2003*

*Amended by Order No. 2009-79 of 22 January 2009 Art. 6 Official Journal of 23 January 2009*

*Amended by Order No. 2010-788 of 12 July 2010 Art. 225 Official Journal of 13 July 2010: addition to the second paragraph – Provision applicable to financial years closed from 1 January 2011 onwards)\**

*Inserted by Act No. 2010-1249 of 23 October 2010 Art. 28 Official Journal of 23 October 2010*

Article L. 511-36. - Where credit institutions draw up consolidated accounts, they shall do so pursuant to the rules set forth in a regulation of the Autorité des Normes Comptables following consultation with the Comité Consultatif de la Législation et de la Réglementation Financières. They shall be exempted from compliance with said rules, however, if they use the international accounting standards approved by a regulation of the European Commission.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 III 8 Official Journal of 2 August 2003*

*Amended by Order No. 2005-861 of 28 July 2005 article 2 Official Journal of 29 July 2005*

*Amended by Order No. 2009-79 of 22 January 2009 Art. 6 Official Journal of 23 January 2009*

Article L. 511-37. - Any credit institution or investment firm, other than a portfolio management company, or member of the clearing houses referred to in Article L. 440-2, must publish its annual accounts as determined by the Autorité des Normes Comptables following consultation with the Comité Consultatif de la Législation et de la Réglementation Financières.

The Autorité de Contrôle Prudentiel shall ensure that publication as envisaged in this article takes place regularly. It may order the entities referred to in the previous paragraph to issue amending publications in the event of any inaccuracies or omissions being found in the published documents.

It may draw the attention of the public to any information it deems necessary.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 III 8 Official Journal of 2 August 2003*

*Amended by Order No. 2007-1490 of 18 October 2007 Art. 4 Official Journal of 19 October 2007*

*Amended by Order No. 2009-79 of 22 January 2009 Art. 6 Official Journal of 23 January 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

## Subsection 2 Statutory auditors

Article L. 511-38. - Auditing shall be carried out in each credit institution or investment firm by at least two statutory auditors as provided for in Book VIII of the Commercial Code. Said statutory auditors must not represent or belong to firms which have links between them of a legal, professional, equity-holding or organisational nature. They shall perform their duties as determined in Book VIII of the Commercial Code and shall certify the annual accounts. They shall verify the true and fair nature of the information intended for the public, and its conformity with said accounts.

However, where the balance-sheet total of a credit institution or an investment firm is below a threshold set by the Autorité des Normes Comptables following consultation with the Comité

Consultatif de la Législation et de la Réglementation Financières, the certification referred to in the previous paragraph may be given by a single statutory auditor. Where said condition is met, and the institution is subject either to the rules of public accounting or to a specific approval scheme for its accounts which provides guarantees that the Autorité de Contrôle Prudentiel considers to be sufficient, the latter may decide to waive the certification requirement referred to in the previous paragraph. **Such waiver shall not apply where the credit institution or the investment firm is required to draw up consolidated accounts.**

The statutory auditors must provide all necessary guarantees concerning their independence in relation to the credit institutions, investment firms or financial holding companies audited. The provisions of Book VIII of the Commercial Code shall apply to the statutory auditors of any credit institution, investment firm or financial holding company.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 III 8, Art. 116 Official Journal of 2 August 2003*

*Amended by Order No. 2005-1126 of 8 September 2005 Art. 21 Official Journal of 9 September 2005*

*Amended by Order No. 2009-79 of 22 January 2009 Art. 6 Official Journal of 23 January 2009*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 12 Official Journal of 23 October 2010*

Article L. 511-39. - The provisions of Articles L. 225-38 to L. 225-43 of the Commercial Code shall apply to all credit institutions.

For the purposes of Article L. 225-40 of said code, where credit institutions do not have General Meetings, the statutory auditors' special report shall be subject to the definitive approval of the Board of Directors.

Where said credit institutions are exempted from certification as provided for in the second paragraph of Article L. 511-38 of this code, the special report shall be drawn up by the public accountant or by the corporate body responsible for approving the accounts, as applicable.

## Section 7 Prudential provisions and internal auditing

*Amended by Act No. 2008-776 of 4 August 2008 Art. 156 Official Journal of 5 August 2008*

Article L. 511-40. - Any credit institution must be able to show at all times that its assets effectively exceed its liabilities to third parties by an amount at least equal to the minimum capital referred to in Article L. 511-11.

However, the Minister for the Economy shall determine the manner in which institutions resulting from a merger of two or more credit institutions which do not meet the requirements of the preceding paragraph may continue their activities.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 VI 1 Official Journal of 2 August 2003*

Article L. 511-41. - Conditions set forth by the Minister for the Economy require the credit institutions to comply with the management rules intended to ensure their liquidity and solvency for depositors and, more generally, third parties, as well as the stability of their financial structure.

They must, in particular, comply with hedge ratios and risk-division ratios.

They may be authorised to use their internal risk evaluation procedures to ensure compliance with the solvency rules.

Credit institutions must also have a suitable internal auditing system to enable them, inter alia, to assess the risks and profitability of their activities, including any essential or important duties or other operational tasks entrusted to third parties. Where their supervision is based on a consolidated financial situation, financial or mixed groups must adopt internal auditing procedures that enable them to generate information which is useful for the purpose of exercising said supervision. Credit institutions shall notify the Autorité de Contrôle Prudentiel of any large transactions between the credit institutions of a mixed group and the mixed company or its subsidiaries, as provided for in Article L. 612-24.

An order of the Minister for the Economy shall determine the implementing provisions of this article.

In credit institutions, the procedures for reporting to the managerial, administrative and supervisory organs on the efficacy of the internal monitoring, auditing and risk-management systems and the follow-up of incidents detected by said systems shall be determined by order of the Minister for the Economy. Said order shall indicate the manner in which said information shall be conveyed to the management organ.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 VI 1, 2 Official Journal of 2 August 2003*

*Amended by Order No. 2004-1201 of 12 November 2004 Art. 5 Official Journal of 16 November 2004*

*Amended by Order No. 2007-571 of 19 April 2007 Art. 1 Official Journal of 20 April 2007*

*Amended by Act No. 2008-776 of 4 August 2008 Art. 156 Official Journal of 5 August 2008*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 9 Official Journal of 16 July 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 5 Official Journal of 22 January 2010*

**Article L. 511-41-1 A. – The deliberative body of the credit institutions referred to in L. 511-1, the investment firms referred to in Article L. 531-4 and the venture capital companies referred to in Article 1-1 of Act No. 85-695 of 11 July 1985 (which introduces various provisions of an economic and financial nature), whose size is above thresholds set by decree, shall constitute a specialised compensation committee when it meets to prepare its decisions.**

It is mainly composed of independent members, competent to analyse the institution's policies and practices with regard to compensation, including the institution's risk policy.

Said committee or, failing that, the deliberative body, shall carry out an annual examination of:

1 The principles of the institution's compensation policy;

2 The compensation, allowances and benefits of any kind received by the institution's senior managers;

3 The compensation policy for the employees who manage the collective investment undertakings referred to in Article L. 214-1(I, 1, 2, 5, 6) and of the professional staff working in the financial markets whose activities are likely to have a significant influence on the institution's risk exposure.

The committee may be assisted by the internal audit departments or by external auditors. It shall report on its work to the deliberative body on a regular basis.

Institutions which are subject to the obligation referred to in this article shall include the information relating to the compensation policy and practices determined by order of the Minister for the Economy in the report presented to the General Meeting.

Where said institutions belong to a group, the deliberative body may decide to apply the compensation policy of the institution that controls it within the meaning of Article L. 233-16 of the Commercial Code.

Where the institutions referred to in the previous paragraph belong to a group subject to the supervision of the Autorité de Contrôle Prudentiel on a consolidated or sub-consolidated basis, the deliberative body may decide that the duties allocated to the institution's compensation committee by this article should be performed by the compensation committee of the institution on which supervision on a consolidated or sub-consolidated basis is carried out by the Autorité de Contrôle Prudentiel. In this case, the deliberative body of the institution concerned shall receive the information concerning it that is contained in the annual audit conducted in the institution for which supervision on a consolidated or sub-consolidated basis is carried out by the Autorité de Contrôle Prudentiel.

*Inserted by Act No. 2010-1249 of 22 October 2010 Art. 65 Official Journal of 23 October 2010 effective 22 April 2011*

Article L. 511-41-1. - Where the parent company of a credit institution is a credit institution, an investment firm or a financial holding company having its registered office in a State which is not party to the European Economic Area Agreement, the Autorité de Contrôle Prudentiel shall verify, on its own initiative or at the request of the parent company or of a regulated entity approved in a Member State or in another State party to the European Economic Area Agreement, that said credit institution is subject to consolidated supervision by a competent authority in the third country which is equivalent to that applicable in France. If no such equivalence exists, the credit institution is subject to the provisions relating to consolidated supervision applicable in France.

The Autorité de Contrôle Prudentiel may also use other methods to ensure equivalent consolidated supervision subject to approval from the competent authority responsible for consolidated supervision in the European Economic Area and after consulting the relevant authorities in a member State or in another State party to the European Economic Area Agreement. It may, inter alia, require the formation of a financial holding company having its registered office in a Member State or in another State party to the European Economic Area Agreement.

*Inserted by Order No. 2004-1201 of 12 November 2004 Art. 5 e Official Journal of 16 November 2004*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Article L. 511-41-2. - Credit institutions having at least one subsidiary which is a credit institution, an investment firm or a financial institution or which have an equity interest in such an institution or firm shall be required, on the basis of their consolidated financial situation, to comply with management standards determined by order of the Minister for the Economy as well as the rules relating to equity interests referred to in Article L. 511-2.

*Inserted by Order No. 2007-571 of 19 April 2007 Art. 1 Official Journal of 20 April 2007*

Article L. 511-41-3. – The Autorité de Contrôle Prudentiel may instruct the entities referred to in Article L. 612-2(I, A) to take, within a given timeframe, all necessary measures to restore or strengthen their financial situation, to improve their management methods or to ensure that their organisation is adequate for their activities or their development objectives.

The Autorité de Contrôle Prudentiel may require the institution to have equity capital above the minimum amount stipulated by the applicable regulations and require the application of a specific provisioning policy to the assets or special treatment with regard to the equity capital requirements.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 5 Official Journal of 22 January 2010*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Article L. 511-42. – Where the situation of a credit institution appears to warrant it, the Governor of the Banque de France, as chairman of the Autorité de Contrôle Prudentiel, shall, barring any emergency, and after consultation with the Autorité de Contrôle Prudentiel, invite the shareholders or members of said institution to provide it with the support that it needs.

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Article L. 511-43. – (inserted by Order No. 2000-1223 of 14 December 2000, Official Journal of 16 December 2000)

Credit institutions authorised in France are members of the guarantee fund referred to in Articles L. 312-4 to L. 312-16.

Article L. 511-44. – The Autorité de Contrôle Prudentiel shall prepare and update a list of the external credit rating agencies whose assessments may be used by credit institutions and investment firms for the purpose of implementing the regulations referred to in Article L. 511-41. It shall stipulate the credit quality levels that correspond to the ratings given for each agency.

An agency may appear on said list only if its activity and its credit rating experience are such that they ensure the reliability of its ratings, if it regularly reassesses them, and if its methods meet conditions relating to objectivity, independence, consistency and transparency.

An order of the Minister for the Economy shall determine the implementing provisions of this paragraph.

*Inserted by Order No. 2007-571 of 19 April 2007 Art. 1 Official Journal of 20 April 2007*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Article L. 511-45. – Under the conditions determined by order of the Minister for the Economy, the credit institutions shall publish, in an appendix to their annual accounts, information on their establishments and activities in the uncooperative States or territories within the meaning of Article 238-0 A of the Code Général des Impôts (General Tax Code).

*Inserted by Act No. 2009-715 of 18 June 2009 Art. 7 Official Journal of 19 June 2009-*

*Amended by Supplementary Budget Act No. 2009-1674 of 30 December 2009 Art. 22 IV Official Journal of 31 December 2009*

**"Article L. 511-46. – In the institutions referred to in L. 511-1, with the exception of those referred to in L. 512-1-1,**

**the insurance and reinsurance companies, with the exception of those referred to in Article L. 322-3 of the Insurance Code, of the mutual insurance companies governed by Book II of the Mutuality Code, with the exception of those referred to in Article L. 212-3-1 of said code, and the provident institutions governed by Part III of Book IX of the Social Security Code, with the exception of those referred to in Article L. 931-14-1 of said code, the commission referred to in Article L. 823-19 of the Commercial Code also monitors the policy, the procedures and the risk management systems.**

**On a decision of the body responsible for administration or supervision, however, said duties may be entrusted to a different commission, governed by the second and last paragraphs of said Article L. 823-19.]**

*Inserted by Act No. 2010-1249 of 23 October 2010 Art. 28 Official Journal of 23 October 2010 effective 01/05/2011*

## Chapter II Mutual or Cooperative Banks

### Section 1: General provisions

Article L. 512-1. – The mutual or cooperative banks (banques mutualistes ou coopératives) shall be subject to the public limited companies' scheme for mergers, demergers and contributions of assets provided for in Book II of the Commercial Code, even where the legal form in which they are established is not governed by said law.

The provisions of Article L. 236-10 of the Commercial Code shall nevertheless not apply to said institutions if they have not issued securities conferring a right on the net assets.

The mutual and cooperative banks may issue public offers of financial securities.

They may also issue a public offer, as defined for financial securities in Articles L. 411-1 et seq, of their membership shares under the terms and conditions laid down in the General Regulation of the Autorité des Marchés Financiers.

The membership shares of the mutual and cooperative banks are capital shares.

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 56 Official Journal of 7 May 2005*

*Amended by Order No. 2009-80 of 22 January 2009 Art. 4 Official Journal of 23 January 2009*

Article L. 512-1-1. – The following shall be exempted from the obligations referred to in Article L. 823-19 of the Commercial Code:

a) Institutions and entities affiliated with a savings and provident bank (Caisse d'épargne et de Prévoyance) within the meaning of Article L. 512-92;

b) Institutions and entities collectively approved by a regional office (Caisse Régionale), a federal office (Caisse Fédérale) or a regional federation (Fédération Régionale) within the meaning of Article R. 511-3;

c) Institutions and entities collectively approved by a mutual and cooperative bank within the meaning of Article R. 515-1, provided that they have not issued securities admitted to trading on a regulated market.

## Section 2 Popular Banks

### Subsection 1 General Provisions

Article L. 512-2. - The popular banks (Banques Populaires) may do business with shopkeepers, industrialists, manufacturers, craft workers, barge captains, commercial companies and members of the liberal professions only in connection with their normal industrial, commercial, trade or professional activities.

They are nevertheless authorised to render services to their members and to participate in the execution of any transaction guaranteed by a mutual guarantee society (Société de Caution Mutuelle).

They may also accept deposits from any individual or company.

*Amended by Act No. 2009-715 of 18 June 2009 Art. 1 Official Journal of 19 June 2009-*

Article L. 512-3. - I. - The capital of a popular bank must be contributed by at least seven subscribers. The shares subscribed may be unequal. Members who do not participate in the advantages of the popular bank and who are only entitled to a return on their contributions may also subscribe. The popular banks' company constitutional documents determine the extent of, and the conditions applicable to, the liability assumed by each of the members in the company's commitments.

II- The subscribed capital shall not accrue interest at a rate higher than that referred to in Article 14 of the Act of 10 September 1947 on the cooperative charter. The surplus profits, after allocations to reserves, must be distributed to the clients who are members of the bank in proportion to the deductions of any kind applied to them.

III. - Associations founded by shopkeepers, industrialists, manufacturers and craft workers under the Act of 3 July 1901, trade associations, mutual guarantee societies, and savings banks are authorised to contribute to the capital of the popular banks.

Article L. 512-4. - The popular banks are subject to the publication requirements set forth in Article L. 515-10.

Article L. 512-5. - The company constitutional documents of each popular bank shall determine the registered office location, the territorial division and the duration of the company. They shall also determine the composition of the capital, the portion contributed to its formation by each member, the company's system of administration, the number of votes each member may cast at General Meetings having regard to the number of shares he holds, and the maximum number of votes he may hold regardless of said number of shares.

The company constitutional documents of each popular bank shall state whether the company extends the benefit of its services to individuals other than its members.

They shall stipulate that lines of credit be granted only within the limits determined for the bank by the Banque Fédérale des Banques.

They shall determine the conditions applicable to amendments to the company constitutional documents and to dissolution of the company. Approval from the central body of savings banks and popular banks shall be required for any amendment thereto.

*Amended by Act 2001-420 Art. 27 I para. 2 Official Journal of 16 May 2001*

*Amended by Act No. 2006-387 of 31 March 2006 Art. 26 Official Journal of 1 April 2006*

*Amended by Act No. 2009-715 of 18 June 2009 Art. 2 Official Journal of 19 June 2009-*

Article L. 512-6. - The members' shares are always registered.

Where they are transferable, they shall be transferred with the approval of the Board of Directors.

Where a popular bank is formed as an open stock company, the company constitutional documents shall determine the conditions under which the members may leave the company, receive reimbursement for their shares and be released from their commitments.

Article L. 512-7. - The members of a popular bank cannot, under any circumstances, at any time, or in any form whatsoever, receive in reimbursement of their contribution a sum which exceeds the paid-up fraction of the membership shares that they hold. In particular, the reserves and provisions allocated by the company cannot give rise to any distribution between its members.

Article L. 512-8. - If, after repayment of the corporate debts, including advances of any kind granted by the Federal Bank, the liquidation fees and the paid-up fraction of the membership shares, the dissolution or liquidation of a popular bank reveals surplus assets, the amount of said surplus shall be paid to the collective guarantee fund instituted by Article L. 512-16. The central body of savings banks and popular banks may nevertheless give all or part of said surplus a different application consistent with the popular banks' interests.

*Amended by Act 2001-420 2001-05-15 Art. 27 I para. 2*

*Amended by Act No. 2009-715 of 18 June 2009 Art. 2 Official Journal of 19 June 2009-*

Article L. 512-9. - The provisions of Article L. 512-8 shall apply, after repayment of the advances of any kind received from the central body of savings banks and popular banks, to the surplus assets of a company which, for whatever reason, has lost its popular bank status. The amount of said surplus shall be determined, in the absence of any amicable agreement, by an expert chosen by the extraordinary General Meeting of the company and approved by the central body of savings banks and popular banks. It shall be immediately collectable from the company concerned.

*Amended by Act 2001-420 2001-05-15 Art. 27 I para. 2*

*Amended by Act No. 2009-715 of 18 June 2009 Art. 2 Official Journal of 19 June 2009-*

### Subsection 2 The Popular Banks network

*Amended by Act No. 2009-715 of 18 June 2009 Art. 1 Official Journal of 19 June 2009-*



Article L. 512-10. - *Repealed by Act No. 2009-715 of 18 June 2009 Art. 1 Official Journal of 19 June 2009-*

Article L. 512-11. - The popular banks network consists of the popular banks, the mutual guarantee societies which grant them exclusivity with regard to their guarantees and the Société de Participations du Réseau des Banques Populaires.

*Replaced by Act No. 2009-715 of 18 June 2009 Art. 1 Official Journal of 19 June 2009-*

Article L. 512-12. - In order to ensure the liquidity and solvency of the popular banks network, the central body of the savings banks and the popular banks referred to in Article L. 512-106 has access to guarantee funds entered in the accounts of the Société de Participations du Réseau des Banques Populaires which, if they are used, it may decide to reconstitute by calling for the necessary contributions from the popular banks.

*Replaced by Act No. 2009-715 of 18 June 2009 Art. 1 Official Journal of 19 June 2009-*

### Subsection 3 Miscellaneous provisions

*(title law of 15 May 2001, known as NRE)*

Article L. 512-13. - The use of the words "popular bank" as a title or description by any entity other than those referred to in this section is prohibited.

*Amended by Act No. 2001-420 of 15 May 2001 Art. 27 I, VIII Official Journal of 16 May 2001*

*Article L. 512-14 to 18. - Repealed by the Act of 15 May 2001, known as NRE, Article 27 Official Journal of 16 May 2001.*

## Section 3 Crédit Agricole

Article L. 512-20. - The Crédit Agricole branches governed by this section are those of Crédit Agricole Mutuel and the Crédit Agricole's central body.

The Crédit Agricole Mutuel's branches comprise:

1 The branches of the Crédit Agricole Mutuel described in Article L. 512-34;

2 The local branches of the Crédit Agricole Mutuel affiliated with the regional offices referred to in 1.

The local branches and regional offices are cooperative societies.

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 57 Official Journal of 7 May 2005*

### Subsection 1 The branches of Crédit Agricole Mutuel

#### Paragraph 1 Organisation

Article L. 512-21. - The purpose of the Crédit Agricole Mutuel is to facilitate and guarantee its members' banking transactions relating to agricultural production and agricultural and rural equipment.

Article L. 512-22. - The Crédit Agricole Mutuel admits to membership agricultural groups or their members, public-sector institutions, associations and bodies indicated on a list determined by decree, and rural craft workers who do not employ more than two workers on a permanent basis.

The company constitutional documents may nevertheless provide for the Crédit Agricole Mutuel to admit to membership individuals and entities for whom/which they have executed a transaction referred to in Articles L. 311-1, L. 311-2, L. 511-2 and L. 511-3.

The provisions of the first paragraph shall not impede the application of the provisions of Article 3 bis of Act No. 47-1775 of 10 September 1947 on the cooperative charter.

*Amended by Order No. 2000-1223 of 14 December 2000, rectification*

Article L. 512-23. - The capital of the Crédit Agricole Mutuel cannot be formed by share subscriptions. It must be subscribed by the members in the form of membership units.

Said membership units are registered. They are transferable, but the Board of Directors must approve their sale.

A branch of the Crédit Agricole Mutuel cannot be formed until one quarter of the share capital has been paid up.

Article L. 512-24. - If the branch of the Crédit Agricole Mutuel has variable capital, it cannot be reduced below the level of the founding capital through departing members recovering their contributions.

Article L. 512-25. - The capital of a branch of the Crédit Agricole Mutuel which has availed itself of a credit facility from the Crédit Agricole's central body may be reduced below the level it had reached when the last advance was made only with the latter's express approval.

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 57 Official Journal of 7 May 2005*

Article L. 512-26. - The members of a branch of the Crédit Agricole Mutuel cannot, in principle, be released from their commitments to it until the transactions in progress at the time of their leaving are settled. In all cases, their liability ceases five years after the date of their departure.

Under no circumstances shall public law legal entities incur liability beyond the amount of the units they have subscribed.

Article L. 512-27. - The branches of the Crédit Agricole Mutuel have a lien on the units which form the share capital in order to cover all their members' obligations towards them.

Article L. 512-28. - The duration of a branch of the Crédit Agricole Mutuel is indefinite.

Article L. 512-29. - The branches of the Crédit Agricole Mutuel cannot carry out transactions until they have filed their company constitutional documents and a full list of the directors or managers and members with the Regional Court having jurisdiction at the place where their principal registered office is located, indicating their name, occupation and domicile, and the amount of their subscription, as determined in a decree issued following consultation with the Conseil d'Etat.

The branch shall be validly constituted as soon as said filing has taken place.



Article L. 512-30. - Branches of the Crédit Agricole Mutuel are not required to register with the Trade and Companies Register.

Article L. 512-31. - The company constitutional documents shall determine the registered office location, the territorial division and the method of administration of the Crédit Agricole Mutuel's branches.

They determine the nature and the scope of their activities, the rules applicable to amendments to the company constitutional documents, to dissolution of the company, to the composition of the capital, the proportion which each member may contribute to the capital and the conditions under which they may withdraw therefrom.

They determine the scope and conditions of the liability each member assumes in relation to the commitments made by the branch, pursuant to the provisions of Article L. 512-26.

The company constitutional documents of a branch of the Crédit Agricole Mutuel which has availed itself of a credit facility from the Crédit Agricole's central body determine the maximum amount of the deposits that may be received in current accounts or term deposit accounts, as the amount of said deposits must always be represented by an equivalent asset which is immediately realisable on the due date.

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 57 Official Journal of 7 May 2005*

Article L. 512-32. - (Order No. 2004-1382 of 20 December 2004 Art. 8 Official Journal of 22 December 2004) Article L. 228-39 of the Commercial Code does not apply to mortgage lenders.

Article L. 512-33. - The corporate purpose of the branches of the Crédit Agricole Mutuel is to:

1. Facilitate the transactions executed by the members of the branches of the Crédit Agricole Mutuel in their territorial division which are guaranteed by said branches.

In the event of there being no local branch to deal with applications, however, a regional office may, very occasionally, and if it has sufficient guarantees, grant various types of loans directly and, in particular, short-term loans to finance harvests;

2. Make available to the beneficiary institutions any long-term loans which may be granted to them by the Crédit Agricole's central body.

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 57 Official Journal of 7 May 2005*

Article L. 512-34. - The designation "regional office of the Crédit Agricole Mutuel" (Caisse Régionale de Crédit Agricole Mutuel) is reserved for regional offices which receive advances from the Crédit Agricole's central body and which operate under its supervision.

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 57 Official Journal of 7 May 2005*

Article L. 512-35. - In order to transact business through a regional office of the Crédit Agricole Mutuel, a branch of the Crédit Agricole Mutuel must have prior approval from the Crédit Agricole's central body. It must, moreover, be properly affiliated with that regional office and have subscribed at least one of its capital shares.

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 57 Official Journal of 7 May 2005*

## Paragraph 2 Operations

Article L. 512-36. - The branches of the Crédit Agricole Mutuel are administered by a Board of Directors whose members are elected by the General Meeting of members.

The members of the Board of Directors are not paid for their services, without prejudice to reimbursement to the members, where appropriate, and if requested, of any special expenses necessarily incurred in the performance of their duties, or any payment made to the director specifically entrusted with exercising effective supervision over the running of the company as compensation for the time devoted thereto, as determined each year by the General Meeting.

Article L. 512-37. - The members entrusted with the administration of the branch shall incur personal liability only in the event of a violation of the company constitutional documents or of the provisions of this section.

Article L. 512-38. - In the event of the Board of Directors of a regional office of the Crédit Agricole Mutuel ceasing its duties or making decisions contrary to the legal or regulatory provisions or the instructions of the Crédit Agricole's central body, the latter may appoint a committee tasked with the temporary management of the regional office pending the election of a new Board of Directors.

Loans may be granted to directors of regional offices of the Crédit Agricole Mutuel only through a special and grounded decision of the Boards of Directors and must be approved by the Crédit Agricole's central body. Likewise, loans granted to directors of local branches must be approved through a similar procedure administered by the Boards of Directors and must be approved by the regional office.

Loans granted to an institution having one or more directors in common with the lending branch must be approved through a special and grounded decision of the Board of Directors of the regional office, and the Crédit Agricole's central body must be informed of said decision.

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 57 Official Journal of 7 May 2005*

Article L. 512-39. - The Boards of Directors of the regional offices of the Crédit Agricole Mutuel have powers over the administration and management of the local branches affiliated with them similar to those that the Crédit Agricole's central body has over the administration and management of the local branches under Article L. 512-38. The election, by the Boards of Directors of the branches of the Crédit Agricole Mutuel, of their chairmen, vice-chairmen and managing directors must be approved by the regional office of the Crédit Agricole, as must the amount of the compensation which may be allocated pursuant to Article L. 512-36.

However, the decisions of the Boards of Directors of the regional offices relating to the appointment of a committee responsible for the temporary management of a local branch shall not become final and binding until they are approved by the Crédit Agricole's central body.

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 57 Official Journal of 7 May 2005*

Article L. 512-40. - The appointment of the managers of the branches of the Crédit Agricole Mutuel is subject to approval

from the Crédit Agricole's central body and cannot include any undertaking on the part of the regional office to maintain the manager in his post for a fixed term.

The managers may be dismissed by a decision of the general manager of the Crédit Agricole's central body taken after consultation with the Board of Directors.

They are prohibited, unless they have specific authorisation from the Crédit Agricole's central body, from working in an industrial or commercial occupation, from engaging in private paid employment, from privately carrying out any work in return for payment, and from exercising directorship duties in an institution likely to receive loans from the Crédit Agricole.

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 57 Official Journal of 7 May 2005*

Article L. 512-41. - Ordinary General Meetings must be held by 31 March for the regional offices of the Crédit Agricole Mutuel and by 30 April for the local branches.

Article L. 512-42. - The accounts of the Crédit Agricole Mutuel's branches must be kept in accordance with the prescriptions of the accounting and banking authorities and pursuant to the instructions of the Crédit Agricole's central body.

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 57 Official Journal of 7 May 2005*

Article L. 512-43. - In the event of a regional office of the Crédit Agricole Mutuel which has received advances from the Crédit Agricole's central body being dissolved, the balance of the assets shall, after settlement of the debts and repayment of the capital effectively paid up, be placed on deposit without interest with the Crédit Agricole's central body until the amount thereof is, as and when required, made available to any regional office of the Crédit Agricole Mutuel which might be founded in the same *département* to replace the dissolved regional office.

In the event of the dissolution of a local branch of the Crédit Agricole Mutuel which has participated in the benefit of said advances via the regional offices, its assets, including the reserves, shall, after settlement of the debts and repayment of the capital effectively paid up, be allocated to an agricultural project on a decision of the General Meeting approved by the Crédit Agricole's central body.

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 57 Official Journal of 7 May 2005*

## Paragraph 3 Resources

Article L. 512-44. - The Crédit Agricole Mutuel may accept deposits of funds from any individual or entity, with or without interest, as well as any deposit of securities.

Article L. 512-45. - The deposits received by the local branches affiliated with a regional office of the Crédit Agricole Mutuel must be sent immediately to said regional office, which shall manage them.

Where a regional office has a surplus of deposits, said surplus must be deposited with the Crédit Agricole's central body.

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 57 Official Journal of 7 May 2005*

Article L. 512-46. - The regional offices of the Crédit Agricole Mutuel may only issue medium-term notes with variable maturity, with or without interest, in favour of farmers domiciled in the catchment area of the regional office.

## Subsection 2 Central Body of the Crédit Agricole

*(Part Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 57 Official Journal of 7 May 2005)*

## Paragraph 1 Organisation

Article L. 512-47. - The central body of the Crédit Agricole is a public limited company governed by the provisions of the Commercial Code, and by the specific provisions of this subsection, which is responsible for facilitating, coordinating and monitoring execution of the transactions envisaged in this code.

It performs the tasks which, prior to the enactment of the Act of 18 January 1988 relating to the mutualisation of the Caisse nationale du Crédit Agricole, were entrusted by law to the Caisse nationale du Crédit Agricole and to the common guarantee fund.

The equity holdings in the capital of the Crédit Agricole's central body that belong to the Crédit Agricole Mutuel's branches referred to in Article L. 512-34 are consolidated in a common company.

*Amended by Supplementary Budget Act No. 2001-1276 of 28 December 2001 Art. 65 I 2 Official Journal of 29 December 2001*

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 58 Official Journal of 7 May 2005*

Article L. 512-48. - One third of the voting rights attached to the shares of the Crédit Agricole's central body held by the regional offices of the Crédit Agricole Mutuel are distributed in equal measure between them, and the remaining two thirds are distributed in proportion to the number of shares held by each of them.

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 57 Official Journal of 7 May 2005*

Article L. 512-49. - The Board of Directors of the Crédit Agricole's central body shall include, in addition to the members appointed by the General Meeting pursuant to Articles L. 225-17 and L. 225-18 of the Commercial Code, a representative of the

professional agricultural organisations appointed as determined in a decree issued following consultation with the Conseil d'Etat.

The Board of Directors elects a chairman, who must be a director of a regional office of the Crédit Agricole Mutuel, and appoints a general manager responsible for the company's management.

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 57 Official Journal of 7 May 2005*

## Paragraph 2 Resources

Article L. 512-50. - The Crédit Agricole's central body is authorised to receive any deposit of funds and securities.

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 57 Official Journal of 7 May 2005*

## Subsection 3 Inspections

Article L. 512-51. - The Crédit Agricole Mutuel's branches referred to in Articles L. 512-34 and L. 512-35 are subject to the supervision of the Crédit Agricole's central body.

They are required to provide it with all the documents, information and proof needed to facilitate administrative, technical and financial supervision of their organisation and management.

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 57 Official Journal of 7 May 2005*

Article L. 512-52. - Institutions or authorities which have received advances or loans from the Crédit Agricole's central body are subject to the supervision of the Inspectorate General of Finance.

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 57 Official Journal of 7 May 2005*

Article L. 512-53. - Any distribution by the Crédit Agricole's central body of State-subsidised advances to the Crédit Agricole Mutuel's offices is subject to the supervision of the Inspectorate General of Finance.

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 57 Official Journal of 7 May 2005*

Article L. 512-54. - The central body of the Crédit Agricole oversees the running of all the institutions or authorities which have, directly or indirectly, received advances, long-term loans or other loans from the branches of the Crédit Agricole Mutuel pursuant to the present section.

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 57 Official Journal of 7 May 2005*

## Section 4 Crédit Mutuel

Article L. 512-55. - The branches of Crédit Mutuel are subject to the provisions of Act No. 47-1775 of 10 September 1947 on the cooperative charter and those of this section.

They relate exclusively to the Crédit Mutuel.

They may accept deposits from any individual or legal entity and may allow third parties who are not members to benefit from their resources or their services as determined by their company constitutional documents.

The local branches of the Crédit Mutuel must cooperate to found departmental or interdepartmental branches between them.

All departmental and interdepartmental branches of the Crédit Mutuel which are subject to this section must cooperate to found a central office du Crédit Mutuel between them.

*Amended by Act No. 2006-387 of 31 March 2006 Art. 26 Official Journal of 1 April 2006*

Article L. - 512-56. Each branch of the Crédit Mutuel must belong to a regional federation and each regional federation must belong to the Confédération Nationale du Crédit Mutuel, whose company constitutional documents are approved by the Minister for the Economy.

The National Confederation of the Crédit Mutuel is tasked with:

1. Collectively representing the Crédit Mutuel branches to assert their common rights and interests;
2. Exercising administrative, technical and financial control over the organisation and management of each branch of the Crédit Mutuel;
3. Taking all measures necessary to ensure the proper functioning of the Crédit Mutuel by encouraging, inter alia, the creation of new branches or arranging the closure of existing branches, in the latter case either through a merger with one or more other branches or through a voluntary winding-up.

*Article L. 512-57. - Repealed by Act No. 2008-776 of 4 August 2008 Art. 150 Official Journal of 5 August 2008*

Article L. 512-58. - The provisions of Articles L. 512-55 to L. 512-57(1) shall apply to the Crédit Mutuel branches in Bas-Rhin, Haut-Rhin and the Moselle governed by the local Act of 1 May 1889, as amended, relating to cooperative associations, validated by Article 5 of the Act of 1 June 1924.

NB (1): Article 512-57 is repealed

Article L. 512-59. - A decree issued following consultation with the Conseil d'Etat shall determine the measures required for implementation of this section, as and where necessary.

## Section 5 Crédit Mutuel Agricole et Rural

*(Section 5 deleted LSF 2003-706 Art. 93 and reinstated by Order No. 2005-429 amending the Monetary and Financial Code Art. 59 Official Journal of 7 May 2005)*

Article L. 512-60. - The branches de Crédit Mutuel Agricole et Rural are governed by the rules set forth in section 3, excluding the provisions which refer specifically to the branches of the

Crédit Agricole Mutuel which are subject to the provisions of Article L. 512-35. Their central body is the Confédération Nationale du Crédit Mutuel. They must belong to the Fédération du Crédit Mutuel Agricole et Rural, which in turn belongs to the Confédération du Crédit Mutuel.

*Article repealed par LSF Art. 93 Reinserted by Act No. 2006-387 of 31 March 2006 Art. 26 Official Journal of 1 April 2006*

## Section 6 Cooperative Banking Societies

### Subsection 1 General provisions

Article L. 512-61. - Cooperative banking societies (Sociétés Coopératives de Banque) are fixed-capital companies having the form of a union of cooperatives subject to the provisions of this section and, insofar as they are not contrary to them, the provisions of Act No. 47-1775 of 10 September 1947 on the cooperative charter.

Without prejudice to application of the provisions of Article 3 bis of Act No. 47-1775 of 10 September 1947 on the cooperative charter, only cooperative societies, mutual societies and mutual insurance companies governed by the Insurance Code may be members of a cooperative banking society, as may, subject to a limit of 30% of the capital and voting rights, the non-profit associations governed by the Act of 1 July 1901 or by the provisions applicable in the *départements* of Bas-Rhin, Haut-Rhin and Moselle.

Article L. 512-62. - Cooperative banking societies are authorised to increase their capital through incorporation of reserves.

They are authorised to pay a rate of interest on their capital which yields a return equal, at most, to the average rate of fixed-rate bonds issued or guaranteed by the State having a final expiry date beyond seven years whose capital or interest is not indexed, said rate being established on the secondary market of Paris by the Caisse des Dépôts et Consignations (CDC) during the year in respect of which said interest is paid.

Article L. 512-63. - Cooperative banking societies are credit institutions.

They may accept deposits from any individual or legal entity.

They must grant at least 80% of their credit resources to their members, their members' members, cooperative societies, mutual societies or mutual societies governed by the Insurance Code, non-profit associations governed by the Act of 1 July 1901 or the local Act applicable in the *départements* of Bas-Rhin, Haut-Rhin and Moselle, and public authorities or institutions and semi-public companies pursuant to Article L. 221-12(1).

NB (1): Article L. 221-12 is repealed with effect from 01/01/2009 (Act No. 2008-776 Art. 145)

### Subsection 2 Board of Directors

Article L. 512-64. - The Board of Directors or the Supervisory Board shall include, as well as ten members' representatives, five representatives of the cooperative banking society's staff, at least one of whom shall be a manager, elected by

the bank's entire staff on a vote by list with proportional representation based on the highest average.

The chairman shall be elected by the Board of Directors; the chairman of the Executive Board shall be elected by the Supervisory Board. Their appointment shall be subject to approval from the Autorité de Contrôle Prudentiel.

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

### Subsection 3 Government representative

Article L. 512-65. - (inserted by Order No. 2000-1223 of 14 December 2000, Official Journal of 16 December 2000)

A Government representative shall be appointed to each cooperative banking society by the Minister for the Economy.

He shall attend all meetings of the Board of Directors or the Supervisory Board and the Executive Board and the committees formed within said boards, as well as all General Meetings of members. He may request communication of all of the society's documents. He shall oppose his veto to any decision which would be contrary to the society's company constitutional documents or the laws and regulations in force. The society shall have a period of eight days in which to appeal against the Government representative's decision to the Minister for the Economy, who is required to give a ruling within fifteen days, failing which, the veto shall be lifted.

The Government representative shall have the same powers in relation to the societies over which the cooperative banking society has control.

### Subsection 4 Company constitutional documents

Article L. 512-66. - The cooperative banking societies' company constitutional documents are approved by the Minister for the Economy.

Article L. 512-67. - Credit institutions which change their status to adopt that of a cooperative banking society must, within one year of their authorisation, comply with the provisions of Articles L. 512-61 to L. 512-64, under pain of withdrawal of authorisation or deletion from the list of approved institutions.

## Section 7 Crédit Maritime Mutuel

### Subsection 1 General provisions

Article L. 512-68. - Pursuant to the directives issued by the Minister for Salt-Water Fishing (Ministre Chargé des Pêches Maritimes), the objective of the Crédit Maritime Mutuel is to facilitate the financing of transactions and investments relating to salt-water fishing, marine cultivation and the activities associated therewith, as well as the extraction of sand, gravel and marine enriching agents, and the harvesting of plants from the sea or from the maritime environment.

Crédit Maritime Mutuel institutions may also execute any banking transaction for their members and for those of the



central body of the savings banks and the popular banks, and may accept deposits of funds and securities from any individual or entity.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 93 IV Official Journal of 2 August 2003*

*Amended by Act No. 2009-715 of 18 June 2009 Art. 1 Official Journal of 19 June 2009*

Article L. 512-69. - Crédit Maritime Mutuel resources are offered by three categories of credit institutions affiliated with the central body of the savings banks and the popular banks:

1. Crédit Maritime Mutuel regional offices (caisses régionales de Crédit Maritime Mutuel);

2. Crédit Maritime Mutuel unions (unions de Crédit Maritime Mutuel) formed between the regional offices, with the possibility of groups such as those described in Article L. 512-74;

3. A central Crédit Maritime Mutuel society.

The composition and application of the share capital of the central Crédit Maritime Mutuel society are governed by Article 19 bis of Act No. 47-1775 of 10 September 1947 on the cooperative charter. The Crédit Maritime Mutuel regional offices and unions must hold a majority of the capital and voting rights of said society, whose company constitutional documents are subject to ministerial approval.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 93 IV Official Journal of 2 August 2003*

*Amended by Act No. 2009-715 of 18 June 2009 Art. 2 Official Journal of 19 June 2009*

Article L. 512-70. - The publication formalities required upon creation of the institutions referred to in Article L. 512-69 or in the event of subsequent acts or deliberations are determined in the decree referred to in Article L. 512-84.

Said institutions shall acquire legal personality as soon as they are registered in the Trade and Companies Register.

Article L. 512-71. - The High Commission of the Crédit Maritime Mutuel shall be consulted concerning the draft regulations relating to Crédit Maritime Mutuel and the distribution of the State's advances. It may take up any issue pertaining to Crédit Maritime Mutuel and give the Government an opinion on said issues. It shall receive an annual activity report on the situation of the Crédit Maritime Mutuel. The composition of the Commission, consisting of six Members of Parliament and three Senators, is determined in the decree referred to in Article L. 512-84.

Article L. 512-72. - The central body of the savings banks and the popular banks shall monitor the validity of the financial and accounting transactions of the affiliated institutions referred to in Article L. 512-69; it shall execute any financial transaction on their behalf and provide them with its services in accordance with their legal and financial autonomy.

The decree referred to in Article L. 512-84 shall determine the circumstances in which the central office performs said duties.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 93 IV Official Journal of 2 August 2003*

*Amended by Act No. 2009-715 of 18 June 2009 Art. 2 Official Journal of 19 June 2009*

Article L. 512-73. - The regional offices and unions constitute a specific category of commercial companies governed by this

section and by the non-conflicting provisions of Act No. 47-1775 of 10 September 1947 on the cooperative charter, by the provisions of the Commercial Code relating to open-stock companies, and by Articles L. 231-1 to L. 231-8 and L. 247-10 of the Commercial Code. The regional offices and, where applicable, the unions, are moreover governed by the provisions of this code that apply to credit institutions. Their company constitutional documents must conform to the model company constitutional documents approved as determined by the decree referred to in Article L. 512-84.

Article L. 512-74. - Without prejudice to application of the provisions of Article 3 bis of Act No. 47-1775 of 10 September 1947 on the cooperative charter, the following may be members of a Crédit Maritime Mutuel regional office or a Crédit Maritime Mutuel union.

1. As determined by the decree referred to in Article L. 512-84, individuals who, as their principal occupation, carry on, or have carried on, one of the business activities referred to in the first paragraph of Article L. 512-68, and likewise the ascendants, widows and orphans of said individuals;

2. Groups which, because they are involved through their purpose in one of the activities referred to in the first paragraph of Article L. 512-68, belong to one of the categories determined in the decree referred to in Article L. 512-84;

3. The central body of the savings banks and the popular banks and the entities whose financial and accounting management it centralises or supervises;

4. Other individuals or legal entities that conduct their business or have a residence in a coastal *département*.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 93 IV Official Journal of 2 August 2003*

*Amended by Act No. 2009-715 of 18 June 2009 Art. 2 Official Journal of 19 June 2009*

Article L. 512-75. - The regional offices of the Crédit Maritime Mutuel and the unions are established for a fixed term.

Their share capital is variable. It is represented by registered units. It cannot be reduced to an amount below that of the founding capital which is fixed by the company constitutional documents at an amount at least equal to the minimum which the branches of the regional Crédit Maritime Mutuel and, where applicable, the unions, are required to maintain in their capacity as credit institutions.

The nominal value of the units is established in the company constitutional documents referred to in Article L. 512-73.

The amount of the units subscribed by the members referred to in paragraphs 3 and 4 of Article L. 512-74 cannot exceed one half of the share capital. The company constitutional documents may set a lower proportion.

A regional office or union shall not be fully and finally constituted until one quarter of the subscribed capital is paid up.

The members shall bear the losses only in proportion to their unit holding in the share capital.

*Amended by Act No. 2006-387 of 31 March 2006 Art. 26 Official Journal of 1 April 2006*

## Subsection 2 Administration

Article L. 512-76. - Each regional office or union shall be administered by a board composed of six directors at least, and twelve at most, elected by the General Meeting for a term of three years from among the members, with one third having to stand for office each year. However, if a seat on the board becomes vacant between two ordinary General Meetings, the Board of Directors may make a provisional appointment under the conditions set forth in the company constitutional documents.

Two thirds, at least, of the members of the Board of Directors must have merchant navy seaman status or be concessionaires of a fishery establishment in the public maritime domain.

Directors of legal entities must designate a permanent representative when they are elected. Said representative shall be subject to the same conditions and obligations and shall incur the same liability as a director does in his own right, without prejudice to the joint and several liability of the legal entity represented.

The directors may be re-elected and dismissed by the General Meeting. They receive no compensation. The General Meeting may, nevertheless, grant them a fixed allowance to compensate them for the time they devote to their duties.

Article L. 512-77. - The directors shall incur civil liability only towards the regional office or the union and towards third parties in the event of a violation of the provisions of the company constitutional documents, a criminal offence or a violation of the provisions of this section and its implementing provisions.

Article L. 512-78. - After each of its partial renewals, the Board of Directors shall elect its chairman and its vice-chairman or vice-chairmen from among its members.

Without prejudice to the powers vested in the General Meeting by the legislative provisions in force and the company constitutional documents, and subject to any limits imposed by the corporate purpose, the board shall have the broadest powers to administer the regional office or union. It shall, inter alia, take decisions to grant loans. It may delegate powers.

It shall make up the accounts for each financial year in order to submit them to the General Meeting and shall draw up a report on the company's situation and its business.

It shall admit new members.

It shall appoint and dismiss the manager as determined by the decree referred to in Article L. 512-84.

Article L. 512-79. - The manager shall implement the decisions of the Board of Directors; he shall be vested with the powers required to manage the regional office or the union within the scope of said decisions.

He shall represent the regional office or the union in its dealings with third parties.

Article L. 512-80. - If the Board of Directors takes decisions contrary to the special laws or regulations that govern Crédit Maritime Mutuel or the directives referred to in Article L. 512-68, or fails to perform its duties, the central body of the savings banks and the popular banks may, without prejudice to the provisions of Article L. 612-34, where a formal letter of notice remains unheeded, and under conditions set forth by the decree referred to in Article L. 512-84, ask the Minister for the Economy to dissolve the Board of Directors and appoint a temporary

director or a temporary committee responsible for the administration of the regional office or the union.

The remit of the temporary director or of the temporary committee thus appointed shall cease when, at his/its behest, a new Board of Directors is elected; said election shall take place within six months, at the latest.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 93 IV Official Journal of 2 August 2003*

*Amended by Act No. 2009-715 of 18 June 2009 Art. 2 Official Journal of 19 June 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 5 Official Journal of 22 January 2010*

Article L. 512-81. - A General Meeting of the members shall be convened at least once each year.

Each member shall have a number of votes proportionate to the number of units he holds, subject to the limits set forth in the company constitutional documents.

Under the conditions and within the limits determined in the company constitutional documents, any individual member may be empowered to represent other members.

The ordinary General Meeting shall deliberate on the accounts for the previous financial year and shall exercise the powers vested in it by Articles L. 512-76 and L. 512-82.

Only an extraordinary General Meeting is authorised to amend the company constitutional documents.

The company constitutional documents lay down the rules for the convening of General Meetings and the preparation of the agenda. They also determine the quorum and majority that shall be required for said meetings to be valid.

## Subsection 3 Statutory auditors

Article L. 512-82. - In each regional office or union, a statutory auditor shall be appointed by the General Meeting for a term of three financial years. He shall be selected pursuant to the provisions of Article L. 511-38. His remit shall be renewable.

Under his own responsibility, the statutory auditor shall certify the accuracy and true and fair nature of the general trading account, the profit and loss account and the balance sheet.

*Amended by Order No. 2005-1126 of 8 September 2005 Art. 21 Official Journal of 9 September 2005*

## Subsection 4 Miscellaneous provisions

Article L. 512-83. - In the event of a regional office or a union being dissolved, the remainder of the assets, after payment of the company's debts and repayment of the capital effectively paid up, shall be allocated, on a proposal from the General Meeting and by decision of the Minister for Salt-Water Fishing, as determined by the decree referred to in Article L. 512-84, to other Crédit Maritime Mutuel branches, or to maritime cooperation bodies or maritime social interest projects approved for said purpose.

Article L. 512-83-1. - The Crédit Maritime Mutuel's regional offices and unions are subject to on-site document inspections carried out by the Inspectorate General of Finance.

*Inserted by Order No. 2005-429 amending the Monetary and Financial Code Art. 60 Official Journal of 7 May 2005*

Article L. 512-84. - A decree issued following consultation with the Conseil d'Etat shall determine the implementing provisions of this section, as and where necessary.

## Section 8 The Savings Bank network

### Subsection 1 Duties

Article L. 512-85. - The savings bank network (réseau des Caisses d'Épargne) participates in the implementation of the principles of solidarity and elimination of exclusion. Its primary objectives are the promotion and collection of savings and the development of providential savings to meet community and family needs. It contributes to the protection of popular savings, the financing of social housing, the improvement of local and regional economic development and the elimination of exclusion from banking and finance for all the participants in the economic, social and environmental fabric.

*Replaced by Act No. 2008-776 of 4 August 2008 Art. 147 Official Journal of 5 August 2008*

### Subsection 2 The network

Article L. 512-86. - The savings bank network comprises the Savings and Provident Banks, the Local Savings Societies (sociétés locales d'épargne), the National Federation of the Savings and Provident Banks (Fédération Nationale des Caisses d'Épargne et de Prévoyance) and the holding company of the savings bank network (société de participations du réseau des Caisses d'Épargne).

*Replaced by Act No. 2009-715 of 18 June 2009 Art. 1 Official Journal of 19 June 2009*

Article L. 512-86-1. - The central body of the savings banks and the popular banks referred to in Article L. 512-106 has at its disposal, in order to ensure the liquidity and solvency of the savings bank network, the common guarantee and solidarity fund (fonds commun de garantie et de solidarité, FCGS) of the savings bank network, which, if it is used, it may decide to reconstitute by calling for the necessary contributions from the savings banks.

*Inserted by Act No. 2009-715 of 18 June 2009 Art. 1 Official Journal of 19 June 2009*

### Subsection 3 Savings and Provident Banks

Article L. 512-87. - The Savings and Provident Banks are cooperative societies which, without prejudice to the provisions of this section, are subject to the provisions of Act No. 47-1775 of 10 September 1947 on the cooperative charter and to those of Book II of the Commercial Code.

Article L. 512-88. - The Savings and Provident Banks are credit institutions and may, notwithstanding the provisions of

Article 3 of Act No. 47-1775 of 10 September 1947 on the cooperative charter, carry out all banking transactions.

Article L. 512-89. The membership shares of the Savings and Provident Banks may be held only by Local Savings Societies.

The company constitutional documents of the Savings and Provident Banks may provide that the number of votes allocated to each local association be a function of the number of units it holds. Where the portion of the capital held by a Local Savings Society in the Savings and Provident Bank to which it is affiliated exceeds 30% of the total voting rights, the number of votes allocated to it shall be reduced pro tanto. The membership shares of the Savings and Provident Banks may be held only by the Local Savings Societies.

Article L. 512-90. - Article L. 512-90. The Savings and Provident Banks are managed by an Executive Board under the supervision of a Supervisory Board. The latter is known as the Guidance and Supervision Board (conseil d'orientation et de surveillance, COS).

The Guidance and Supervision Board is composed of seventeen members.

As provided for in the company constitutional documents, it includes:

1. Members directly elected by the employee members of the Savings and Provident Bank;
2. Members directly elected by the territorial authorities and the tax-raising public establishment for intercommunal cooperation (établissements publics de coopération intercommunale à fiscalité propre, EPCI) which are members of the Local Savings Societies affiliated with the Savings and Provident Bank;
3. Members elected by the General Meeting of members of the Savings and Provident Bank. Neither the territorial authorities nor the employees of the Savings and Provident Bank may be elected in this way.

On each Guidance and Supervision Board, the number of members elected by the employees shall be identical to that of the members elected by the territorial authorities and the tax-raising EPCIs and cannot be greater than three.

In the event of a merger between Savings and Provident Banks, either through amalgamation or by the creation of a new legal entity, the number of members of the Guidance and Supervision Board of the bank resulting from the merger may exceed seventeen for a maximum period of three years from the date of the merger, subject to their distribution between the different member categories being as stipulated in the fourth to seventh paragraphs above. In such cases, the administration and supervision board (conseil d'administration et de surveillance) shall consist of not more than thirty-four members and the number of members elected by the employees and the number elected by the territorial authorities shall not exceed six.

Failing agreement thereon between the institutions concerned, the total number of members of the Guidance and Supervision Board and their distribution by category may be determined by the central body of the Savings and Provident Banks.

The members of the Executive Board shall be proposed by the Guidance and Supervision Board. The Executive Board of the central body of the savings banks and the popular banks shall verify that they possess the requisite respectability and experience for said function and propose them to the Supervisory Board of the central body of the savings banks and the popular banks for approval. When said board has given its approval, the Guidance

and Supervision Board of the Savings and Provident Bank shall appoint the members of the Executive Board.

Without prejudice to application of the provisions of Article L. 612-39, approval may be withdrawn by the Supervisory Board of the central body of the savings banks and the popular banks on a proposal from its Executive Board after consultation with the Guidance and Supervision Board of the Savings and Provident Bank concerned. Withdrawal of approval shall entail dismissal of the individual concerned.

*Amended by Act No. 2001-1168 of 11 December 2001 Art. 29 I Official Journal of 12 December 2001*

*Amended by Act No. 2008-776 of 4 August 2008 Art. 149 Official Journal of 5 August 2008*

*Amended by Act No. 2009-715 of 18 June 2009 Art. 2 Official Journal of 19 June 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 5 Official Journal of 22 January 2010*

*(Article L. 512-91. - Repealed by Act No. 2008-776 of 4 August 2008 Art. 147 Official Journal of 5 August 2008)*

## Subsection 4 Local Savings Societies

Article L. - 512-92. Local Savings Societies are cooperative societies subject to the provisions of Act No. 47-1775 of 10 September 1947 on the cooperative charter, without prejudice to the provisions of this section.

They contribute to the drafting of the general directives of the Savings and Provident Bank to which they are affiliated. They also have as their purpose, within the framework of said general directives, the encouragement of the broadest possible unit holding in said Savings and Provident Bank through incentivisation of the membership.

To facilitate said unit holding, the Local Savings Societies are authorised to offer the members referred to in Article L. 512-93 an initial unit at a preferential price.

Local Savings Societies cannot execute banking transactions or provide payment services. They are exempted from registration in the Trade and Companies Register. They are affiliated with the Savings and Provident Bank in the territorial division in which they conduct their business.

The rate of return on the units held by the members of the Local Savings Societies is determined by the General Meeting of the Savings and Provident Bank to which said Local Savings Societies are affiliated.

The creation of a Local Savings Society requires prior approval from the Savings and Provident Bank to which the Local Savings Society is affiliated, and also from the central body of the savings banks and the popular banks.

All the Local Savings Societies affiliated with each Savings and Provident Bank constitute a single entity for the purposes of Article 145 of the Code Général des Impôts.

The provisions of Article 16 of the aforementioned Act No. 47-1775 of 10 September 1947 do not apply to Local Savings Societies.

*Amended by Act No. 2001-1168 of 11 December 2001 Art. 29 II Official Journal of 12 December 2001*

*Amended by Act No. 2008-776 of 4 August 2008 Art. 147 Official Journal of 5 August 2008*

*Amended by Act No. 2009-715 of 18 June 2009 Art. 2 Official Journal of 19 June 2009*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 9 Official Journal of 16 July 2009*

Article L. 512-93. - The following may become members of a Local Savings Society, as stipulated in the company constitutional documents, tax-raising EPCIs which have carried out a transaction referred to in Articles L. 311-1, L. 311-2, L. 511-2 and L. 511-3 with the Savings and Provident Bank, the employees of said Savings and Provident Bank, the territorial authorities and, under the conditions set forth in Article 3 bis of Act No. 47-1775 of 10 September 1947 on the cooperative charter, the other individuals or legal entities referred to in said article. However, the territorial authorities and the tax-raising EPCIs cannot collectively hold more than 20% of the capital units of each Local Savings Society.

Any member of a Local Savings Society wishing to liquidate some or all of his units under the provisions of the aforementioned Article 18 of Act No. 47-1775 of 10 September 1947 may resell them only at their nominal value to the Local Savings Society he belongs to.

Each Local Savings Society may resell the units bought from its members only at their nominal value.

*Amended by Act No. 2008-776 of 4 August 2008 Art. 148 Official Journal of 5 August 2008*

Subsection 5 *Repealed by Act No. 2009-715 of 18 June 2009 Art. 1 Official Journal of 19 June 2009*

Article L. 512-94 to L. 512-98 *Repealed by Act No. 2009-715 of 18 June 2009 Art. 1 Official Journal of 19 June 2009*

## Subsection 6 National Federation of the Savings and Provident Banks

Article L. 512-99. - The National Federation of the Savings and Provident Banks is constituted pursuant to the terms set forth in the Act of 1 July 1901 on partnership agreements. It draws together all the Savings and Provident Banks, represented by three members of their Guidance and Supervision Board, including its chairman, and by two members of their Executive Board, including its chairman.

The National Federation of the Savings and Provident Banks is tasked with:

1. Coordinating the relations of the Savings and Provident Banks with the membership and representing their common interests, particularly in relation to the public authorities;
2. Participating in the determination of the network's strategic positioning;
3. Defining, coordinating and promoting the corporate responsibility actions of the Savings and Provident Banks in keeping with the commercial and financial objectives of the central body of the savings banks and the popular banks;
4. Contributing to the definition, by the central body of the savings banks and the popular banks, of the national objectives for the network's social relations;
5. Organising training for the senior managers and the members in conjunction with the central body of the Savings and Provident Banks through regular free information sessions on a broad range of topics in the economic sphere;
6. Ensuring compliance with the ethical rules throughout the Caisses d'Épargne network;



7. Participating in the cooperation between the French Caisses d'Épargne and foreign institutions of the same type.

The central body of the Savings and Provident Banks shall consult the National Federation of the Savings and Provident Banks regarding any reform that might affect the Savings and Provident Banks.

The National Federation of the Savings and Provident Banks calls for contributions from the Savings and Provident Banks in order to finance its operating budget.

*Amended by Act No. 2008-776 of 4 August 2008 Art. 147 Official Journal of 5 August 2008*

*Amended by Act No. 2008-776 of 4 August 2008 Art. 148 Official Journal of 5 August 2008*

*Amended by Act No. 2009-715 of 18 June 2009 Art. 1 Official Journal of 19 June 2009*

*Article L. 512-100. Repealed by Act No. 2008-776 of 4 August 2008 Art. 147 Official Journal of 5 August 2008*

*Subsection 7 Reserve and guarantee fund- repealed by Act No. 2008-776 of 4 August 2008 Art. 146 Official Journal of 5 August 2008 -Article L. 512-101 repealed.*

## Subsection 8 General provisions

Article L. - 512-102. The use of the designations "Savings and Provident Bank", "Savings Bank" and "Local Savings Society" by any entity which does not come within the scope of this section is prohibited.

*Amended by Act No. 2009-715 of 18 June 2009 Art. 1 Official Journal of 19 June 2009*

Article L. 512-103. - The use of any process to forge passbooks, prospectuses or posters, or other items likely to create confusion with the savings banks and mislead the public concerning the nature of the transactions concerned is also prohibited.

Article L. 512-104. - A decree issued following consultation with the Conseil d'Etat shall determine the implementing provisions of this section.

Article L. 512-105. – For the purposes of the last three paragraphs of Article L. 512-1, the cooperative banks (Banques Coopératives) shall be, for the savings bank network, the Savings and Provident Banks, and the Local Savings Societies that are affiliated with them.

*Inserted by Act No. 2005-842 of 26 July 2005 Art. 25 Official Journal of 27 July 2005*

*Amended by Order No. 2009-80 of 22 January 2009 Art. 4 Official Journal of 23 January 2009*

*Chapter III Limited-liability real-estate credit companies Relocated to section 5 of Chapter V of Part 1 of Book V by order No. 2005-429 amending the Monetary and Financial Code Art. 67 Official Journal of 7 May 2005*

*Article L. 513-1. Relocated to Article L. 515-34 by Order No. 2005-429 amending the Monetary and Financial Code Art. 67 Official Journal of 7 May 2005*

## Section 9 Central body of the savings banks and the popular banks

*Inserted by Act No. 2009-715 of 18 June 2009 Art. 1 Official Journal of 19 June 2009*

Article L. 512-106. – The central body of the savings banks and the popular banks is the central body of the Cooperative Banking group (Groupe Bancaire Coopératif) composed of the networks of the popular banks and of the savings banks as well as the other affiliated credit institutions. It is constituted in the form of a public limited company (société anonyme) in which the popular banks and the Savings and Provident Banks jointly hold an absolute majority of the capital shares and voting rights. It must have credit-institution status.

Credit institutions whose control is directly or indirectly held, solely or jointly, within the meaning of Article L. 233-16 of the Commercial Code, by the central body of the savings banks and the popular banks or by one or more institutions belonging to the networks referred to in the first paragraph, may also be affiliated as provided for in Article L. 511-31 of this code.

The representatives of the members proposed by the chairmen of the Guidance and Supervision Boards of the savings banks and the chairmen of the Boards of Directors of the popular banks constitute a majority on the Supervisory Board or the Board of Directors of the central body of the savings banks and the popular banks.

*Inserted by Act No. 2009-715 of 18 June 2009 Art. 1 Official Journal of 19 June 2009*

Article L. 512-107. – The central body of the savings banks and the popular banks exercises the powers referred to in Articles L. 511-31 and L. 511-32 of this code. In this capacity it is responsible for:

1 Determining the group's policy and strategic objectives and those of each of the networks it comprises;

2 Coordinating the commercial policies of each said network and taking any measure conducive to the group's development, inter alia by acquiring or holding the strategic equity interests;

3 Representing the group and each of the networks in order to assert their common rights and interests, in relation, inter alia, to the bodies referred to in the first paragraph of Article L. 511-31, and also to negotiate and enter into the national or international agreements on their behalf;

4 Representing the group and each of the networks as their employer in order to assert their common rights and interests, and also to negotiate and enter into the collective sectoral agreements on their behalf;

5 Taking any measures necessary to ensure the liquidity of the group and of each of the networks and, to this end, to determine the group's liquidity management rules, inter alia by establishing the principles and terms applicable to the investment and management of its member institutions' cash resources and the circumstances in which said institutions may enter into transactions with other credit institutions or investment firms, carry out securitisation transactions or issue financial instruments, as well as any financial transaction required in connection with their liquidity management;

6 Taking any measures necessary to ensure the liquidity of the group and of each of the networks, inter alia by implementing the group's appropriate internal solidarity mechanisms and by creating a guarantee fund common to the two networks for which it shall determine the operating rules, the terms of intervention in conjunction with the funds referred to in Articles L. 512-12, and the affiliated institutions' contributions for its appropriation and reconstitution;

7 Determining the organisational principles and conditions of the internal auditing mechanism of the group and of each of the networks and providing monitoring of said organisation and of the management and quality of the financial situation of the affiliated institutions, inter alia through on-the-spot inspections within the scope of the intervention described in the fourth paragraph of Article L. 511-31;

8 Determining the risk-management policy and principles, and the limits thereof, for the group and for each of the networks and providing monitoring thereof on a consolidated basis at all times;

9 Approving the company constitutional documents of the affiliated institutions and of the Local Savings Societies, as well as any amendments thereto;

10 Approving the individuals designated to effectively determine the strategy applicable to the activities of the affiliated institutions pursuant to Article L. 511-13;

11 Calling for the contributions required to enable it to perform its duties as a central body;

12. Ensuring performance, by the Caisses d'Épargne, of the duties set forth in Article L. 512-85.

*Inserted by Act No. 2009-715 of 18 June 2009 Art. 1 Official Journal of 19 June 2009*

Article L. 512-108. – In the event of an affiliated institution taking decisions that do not comply with the laws or regulations relating to banking and financial activities or with the instructions determined by the central body of the savings banks and the popular banks, the central body may dismiss the individual(s) who effectively determine said institution's business strategy and also collectively dismiss the members of its Executive Board or of its Board of Directors or its Supervisory Board and designate the individuals who shall be responsible for assuming their functions until such time as new appointees are designated.

*Inserted by Act No. 2009-715 of 18 June 2009 Art. 1 Official Journal of 19 June 2009*

## Chapter IV Municipal Credit Banks

### Section 1 Duties

Article L. 514-1. I. - The municipal credit banks are local public lending and welfare institutions. Their role is to prevent usury through the granting of loans secured by pledge, in respect of which they have a monopoly. They may execute any transaction with the credit institutions, accept funds from individuals and legal entities, make means of payment available to them and effect related transactions with them within the meaning of Article L. 311-2.

II. - They conduct their business after obtaining approval from the Autorité de Contrôle Prudentiel. Said approval may include, consistent with the bank's technical and financial resources, approval for it to engage in one or more of the following activities:

1. The granting of loans to individuals.

2. The granting of loans to local public institutions and to the associations governed by the Act of 1 July 1901 on partnership agreements, conducting their business in the branch's normal catchment area pursuant to a corporate purpose of social or cultural interest.

The branches may, either individually or collectively, hold shares or equity interests in companies and create associations that respectively contribute to the development of the activities they are authorised to carry out.

The municipal credit banks may freely assign the property, the rights and the obligations associated with their activities other than lending secured by pledge.

They may also contribute said property, rights and obligations to public limited companies governed by Book II of the Commercial Code whose corporate purpose is limited to the activities, other than lending secured by pledge, which the municipal credit banks may engage in. They hold shares in said companies in proportion to their contributions. Said companies shall be approved by the Autorité de Contrôle Prudentiel in the manner and subject to the limits indicated in the first four paragraphs.

The equity interests held by the municipal credit banks are transferable. To ensure their universal transferability, the contributions referred to in the previous paragraph shall be deemed to be placed under the legal scheme applicable to demergers.

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

## Section 2 Formation and administration

Article L. 514-2. - The municipal credit banks are instituted by decree countersigned by the Minister for the Economy and the Minister for Local Government, at the request of the Municipal Council(s) concerned.

The branches are administered by a manager under the supervision of a Guidance and Supervision Board.

The manager is appointed by the mayor of the commune in which the bank has its registered office, after consultation with the Guidance and Supervision Board.

The Guidance and Supervision Board is composed of the mayor of the commune in which the registered office is located, as its ex officio chairman, and, in equal numbers, of members elected by, and from among, the municipal councillors of said commune and of members appointed by the mayor of said commune on account of their expertise in the financial or banking sphere(s).

The Guidance and Supervision Board determines the general directives and organisational rules of the Municipal Credit Bank and exercises supervision of the manager's administration of the institution at all times.

A decree issued following consultation with the Conseil d'Etat shall determine the Guidance and Supervision Board's other areas of competence and the categories of duties other than day-to-day management tasks whose performance is subject to its prior authorisation.

The Guidance and Supervision Board ensures observance of the general regulations of the banking profession and of the laws and regulations applicable to the municipal credit banks. To this end, it shall carry out the verifications and inspections it considers appropriate and shall request sight of the documents it deems conducive to the performance of its duties.

The commune in which the branch has its registered office is deemed to be the sole shareholder or member of the institution for the purposes of Article L. 511-42.

Following their approval by the Guidance and Supervision Board, the annual budget of the Municipal Credit Bank, and also

the supplementary budgets and the financial account, shall be sent to the municipal council of the commune in which the branch has its registered office, for information.

An annual report relating to the activities and the financial situation of the Municipal Credit Bank shall be presented to the municipal council by the mayor during the session preceding that at which the commune's initial budget must be approved.

Any plan which would alter the scope of the Municipal Credit Bank's banking activities or the acts pertaining to the free disposal of its assets, the list of which is determined by decree consistent with the criteria of threshold or scale, shall be made known to the municipal council in advance by the mayor, who shall state the reasons therefor.

Article L. 514-3. - The organisation and running of the municipal credit banks, including the remit of the Guidance and Supervision Board and the financial system, shall be determined by decrees issued following consultation with the Conseil d'Etat on the basis of a report from the Minister for the Economy.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 III 9 Official Journal of 2 August 2003*

Article L. 514-4. - The decrees referred to in Article L. 514-3 shall determine the rules under which the surpluses appearing at the end of the financial year and the sums received following the enforcement of pledges shall be allocated to the provisions of the branches. If said surpluses are not fully used in said manner, the remainder shall be allocated to other social welfare bodies.

## **Chapter V Financial holding companies**

### **Section 1 Common provisions**

Article L. 515-1. - The financial holding companies referred to in Article L. 511-9 cannot accept funds from the public for on-demand deposits, or term deposits of less than two years, unless they are authorised to do so on a secondary basis under the conditions set forth by the Minister for the Economy.

Financial holding companies may only execute banking transactions that are permitted by the authorisation they have received or by the laws and regulations specific to them.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 VI 1 Official Journal of 2 August 2003*

### **Section 2 Plant and real-estate leasing companies**

Article L. 515-2. - The leasing transactions referred to in Article L. 313-7 may be carried out on a regular basis only by commercial companies which are authorised credit institutions.

Real-estate leasing companies are companies which, in the normal course of their business, manage companies created with a view to occasionally carrying out the transactions referred to in Article L. 313-7. They shall be subject to the provisions of the previous paragraph.

Article L. 515-3. - The institutions or firms referred to in Article L. 515-2 which contravene the provisions of this code or of its implementing provisions shall incur the disciplinary sanctions referred to in Article L. 612-39.

*Amended by Order No. 2010-76 of 21 January 2010 Art. 5 Official Journal of 22 January 2010*

## **Section 3 Mutual Guarantee Societies**

### **Subsection 1 Object**

Article L. 515-4. - Mutual guarantee societies may be formed between shopkeepers, industrialists, manufacturers, craft workers, commercial companies and members of the liberal professions. Their purpose is to grant guarantees to their members in connection with their professional activities.

Mutual guarantee societies may be formed, moreover, between property owners or holders of property rights. Their purpose is to grant guarantees to their members in respect of loans taken out to facilitate home ownership or improvements and repairs to their properties.

The societies referred to in the first and second paragraphs are authorised to provide their members with the consultancy services referred to in paragraph 5 of Article L. 311-2 where such services are directly linked to a guarantee, although the applicant for a guarantee shall not be obliged to accept a consultancy service.

The guarantee may be provided through an aval or an endorsement of negotiable debt instruments and bills created, underwritten or endorsed by the members of the societies, or may take any other form.

The capital of the mutual guarantee societies consists of registered units which may be of unequal value, subject to none of them having a value below 1.5 euros, and may be subscribed not only by the members who participate in the society's profits but also by the non-participating members who are entitled only to a return on their contributions.

The society shall not be constituted until one quarter of the subscribed capital is paid up. As an exception to the provisions of Article 12 of Act No. 47-1775 of 10 September 1947 on the cooperative charter, the balance shall be paid up through successive calls for the quarters not yet paid, in proportion to the growth in the mutual guarantee transactions, thus enabling the society to adjust its fund size to the volume of the transactions processed.

*Amended by Supplementary Budget Act Act No. 2001-1276 of 28 December 2001 Art. 51 III Official Journal of 29 December 2001*

## Subsection 2 Company constitutional documents

Article L. 515-5. - Mutual guarantee societies are commercial companies.

Article L. 515-6. The company constitutional documents determine the registered office location and the company's system of administration, the terms and conditions that shall apply to any amendment of said company constitutional documents or any dissolution of the company, the composition of the capital and the proportion in which each of the members shall contribute to its formation.

They govern the scope and the conditions of the liability each member shall incur in the company's commitments.

The company constitutional documents give the members the right to leave and claim reimbursement of the units which belong to them. However, said right may only be used at the end of a financial year, subject to three months' notice and provided that the redemption of said units shall not have the effect of reducing the company's capital to a level below the minimum which its credit-institution status requires it to maintain.

Said redemption cannot exceed either the value of the departing member's units at the time or their nominal value. Any capital gain shall belong to the reserve fund, over which the departing member shall have no rights.

Article L. 515-7. - The company constitutional documents provide for the Board of Directors to determine the maximum amount of the guarantees which may be granted to each member and to limit the term for which they are granted.

They expressly stipulate that the Board of Directors may refuse a guarantee request or grant it only with the security it considers appropriate.

## Subsection 3 Application of the funds

Article L. 515-8. - The capital, the reserve fund and the guarantee fund are used to secure the guarantees granted by the company to cover the bills, notes and commitments in the event of non-payment. Before they initiate the provision of any guarantee, the directors shall be required to file a declaration in duplicate with the registry of the Regional Court having jurisdiction at the place where the company has its registered office, detailing the use they have made of the capital (investments in securities or in bank deposits). A receipt shall be issued for said declaration. The Regional Court judge shall send one original to the registry of the local commercial court.

Each year, a declaration in the same form must account for the use made of the capital and the reserve fund.

The company constitutional documents determine the procedures applicable to the constitution, use and reconstitution of the guarantee fund.

Article L. 515-9. - The company constitutional documents determine the deductions and commissions the company receives in respect of the transactions it has executed.

A reserve fund, known as the "legal reserve" and equal to half of the share capital, shall be created as determined in the first paragraph of Article L. 232-10 of the Commercial Code.

Without prejudice to the possibility of interest being paid, as provided for in the company constitutional documents, on the capital effectively paid up, the operating surpluses shall be allocated to reserves or refunded to the members in proportion to the transactions entered into with them.

Upon dissolution of the company, the reserve fund and the other net assets shall be shared between the members in proportion to their subscriptions unless the company constitutional documents provide for them to be allocated to a charitable application.

## Subsection 4 Disclosure

Article L. 515-10. - The disclosure requirements imposed on ordinary commercial companies are replaced, with regard to mutual guarantee societies, by the following provisions:

1. Before any business is transacted, the company constitutional documents, along with a complete list of the directors or managers and the members, indicating their name, occupation, domicile and the amount of each subscription, shall be filed in triplicate with the registry of the Regional Court having jurisdiction at the place where the company has its registered office. A receipt shall be issued therefor;

2. During the first two weeks of February of each year, the manager or a director of the company shall likewise file in triplicate a statement indicating the number of members the company had on that date and a list of any changes that have taken place among the directors or managers and the members since the last filing and, moreover, a summary table of the income and expenditure and the business transacted during the previous year;

3. The Regional Court judge shall send one original thereof to the registry of the local commercial court;

4. The documents filed with the registries of the Regional Court and the commercial court pursuant to this article and Article L. 515-8 shall be provided to any requester.

Article L. 515-11. - The directors of a Mutual Guarantee Society shall be personally liable for the damage resulting from any violation of the company constitutional documents or of the provisions of this section.

Article L. 515-12. - The implementing provisions of this section are determined in a decree issued following consultation with the Conseil d'Etat.

## Section 4 Real-estate Credit Companies

### Subsection 1 Status and function

**Article L. 515-13. – I. – Real-estate credit companies (sociétés de crédit foncier) are credit institutions granted finance-company status by the Autorité de Contrôle Prudentiel. Their sole object is:**

**1 To grant or acquire guaranteed loans, exposures on public legal entities, and securities and instruments as defined in Articles L. 515-14 to L. 515-17;**

**2 To issue bonds, known as real-estate bonds, having preferred status, as described in Article L. 515-19, to finance**



said categories of loans, exposures, securities and instruments and to acquire other assets having an issuing contract or document within the meaning of Article L. 412-1, or any equivalent document required for admission to trading on foreign regulated markets, which refers to said preferred status.

**II- Real-estate credit companies may also provide financing for the activities referred to above through the issuing of bonds or facilities which do not have said preferred status.**

**They cannot issue the promissory notes referred to in Articles L. 313-42 to L. 313-48.**

**Notwithstanding any legal or contractual provision to the contrary, real-estate credit companies may make temporary assignments of their securities as determined in Articles L. 211-22 to L. 211-34, pledge a securities account as described in Article L. 211-20 and discount some or all of the receivables they hold pursuant to Articles L. 211-36 to L. 211-40 or Articles L. 313-23 to L. 313-35, regardless of their nature, commercial or otherwise. In which case, the statements on the advice note referred to in Article L. 313-23 shall be determined by decree.**

**The receivables or securities thus discounted or assigned do not have the preferred status referred to in Article L. 515-19 and shall not be entered in said companies' accounts by virtue of Article L. 515-20.**

**III - Real-estate credit companies may acquire and own any movable or immovable property which is necessary for the achievement of their corporate purpose or acquired through recovery of their debts.**

**IV. - Real-estate credit companies cannot hold equity interests.**

*Amended by Act No. 2003-706 of 1 August 2003 Art. 38 2 and Art. 94 1 Official Journal of 2 August 2003*

*Amended by Order No. 2007-571 of 19 April 2007 Art. 2 Official Journal of 20 April 2007*

*Amended by Act No. 2008-776 of 4 August 2008 Art. 157 Official Journal of 5 August 2008*

*Amended by Order No. 2009-15 of 8 January 2009 Art. 4 Official Journal of 9 January 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 71 Official Journal of 23 October 2010*

## Subsection 2 Transactions

Article L. 515-14. I. - Guaranteed loans are loans associated with:

1. A first-ranking mortgage or a charge over real-estate conferring, at least, an equivalent guarantee;

2. Or, within limits and under conditions determined in a decree issued following consultation with the Conseil d'Etat, and subject to the loan guaranteed being applied exclusively to the financing of an item of real-estate or to a guarantee of a credit institution or an insurance company which is not included in the consolidation scope referred to in Article L. 233-16 of the Commercial Code which the real-estate credit company comes under.

II. – The loans guaranteed by a charge over real-estate referred to in subparagraph I, 1 and the secured loans referred to in subparagraph I, 2 shall be eligible for financing from preferred

facilities within a limit calculated on a portion of the value of the property financed or used as security. Said portion shall be determined as indicated in a decree issued following consultation with the Conseil d'Etat.

Specific eligibility conditions set forth in a decree issued following consultation with the Conseil d'Etat shall apply to those of said loans which have the benefit of the first-time homebuyers' guarantee referred to in Article L. 312-1 of the Building and Housing Code or any entity or institution substituted therefor and likewise to those of said loans which are covered, in respect of the amount in excess of the fixed portion but not exceeding the value of the property to which the guarantee relates, by a guarantee that meets the conditions referred to in subparagraph I, 2 above or by the guarantee of one or more of the public law legal entities referred to in Article L. 515-15.

III. – The property used as security or the property financed by a guaranteed loan must be located in France, in another Member State of the European Community, in a State party to the European Economic Area Agreement or in a State having the benefit of the highest level of credit quality established by an external credit rating agency recognised by the Autorité de Contrôle Prudentiel pursuant to Article L. 511-44. Its value shall be determined prudently and shall exclude any element of a speculative nature. The valuation procedures are determined in an order of the Minister for the Economy which indicates the cases in which a survey shall be required.

*Amended by Act No. 2001-1168 of 11 December 2001 Art. 31 1 Official Journal of 12 December 2001*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 VI 2 Official Journal of 2 August 2003*

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 63 Official Journal of 7 May 2005*

*Replaced by Order No. 2007-571 of 19 April 2007 Art. 2 Official Journal of 20 April 2007*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Article L. 515-15. – I. – The exposures on public legal entities referred to in Article L. 515-13 are assets items such as loans or off-balance-sheet commitments relating to the entities enumerated below, or totally guaranteed by them:

1. Central administrations, central banks, public institutions, territorial authorities, or groups thereof, in a member State of the European Community or a State party to the European Economic Area Agreement, of the United States of America, of Switzerland, of Japan, of Canada of Australia or of New Zealand;

2. Central administrations or central banks of States which are neither members of the European Community nor parties to the European Economic Area Agreement, with the exception of the United States of America, Switzerland, Japan, Canada, Australia and New Zealand, having the benefit of the highest level of credit quality established by an external credit rating agency recognised by the Autorité de Contrôle Prudentiel pursuant to Article L. 511-44;

3. The European Community, the International Monetary Fund, the Bank of International Settlements, the multilateral development banks included on a list drawn up by order of the Minister for the Economy; other international organisations and multilateral development banks having the benefit of the highest level of credit quality established by an external credit rating agency recognised by the Autorité de Contrôle Prudentiel pursuant to Article L. 511-44;

4. The public institutions and territorial authorities, or groups thereof, of States which are neither members of the European Community nor parties to the European Economic Area Agreement, with the exception of the United States of America, Switzerland, Japan, Canada, Australia or New Zealand, where the exposures on said entities, for the purpose of determining the

equity capital requirements, are given the same weighting as the receivables of the central administrations, the central banks or the credit institutions, or those that are totally guaranteed by those same entities, and they have the benefit of the highest level of credit quality established by an external credit rating agency recognised by the Autorité de Contrôle Prudentiel pursuant to Article L. 511-44;

5. The public institutions and territorial authorities or groups referred to in paragraph 4 above having the benefit of the second-highest level of credit quality established by an external credit rating agency recognised by the Autorité de Contrôle Prudentiel pursuant to Article L. 511-44.

II. – The exposures on public legal entities include, inter alia:

1. The debt instruments issued, or totally guaranteed, by **one or more** of the public legal entities referred to in subparagraphs I, 1, 2, 3, 4 and 5;

2. Cash receivables, including those deriving from a successive performance contract, with the public legal entities referred to in subparagraphs I, 1, 2, 3, 4 and 5 or totally guaranteed by at least one such public legal entity;

3. Receivables deriving from leasing contracts or equivalent contracts to which public legal entities referred to in subparagraphs I, 1, 2, 3, 4 and 5 are parties as lessee or tenant, or receivables deriving from leasing contracts or equivalent contracts totally guaranteed by one or more such public legal entity(s). Real-estate credit companies that acquire debts deriving from a leasing contract may also acquire all or part of the debt that will result from the sale of the leased property.

III. – A decree issued following consultation with the Conseil d'Etat stipulates the terms and, where applicable, the limits on coverage, of the exposures referred to in paragraph I, as well as a requirement for a credit rating assessment performed by an external credit rating agency recognised by the Autorité de Contrôle Prudentiel pursuant to Article L. 511-44.

*Replaced by Order No. 2007-571 of 19 April 2007 Art. 2 Official Journal of 20 April 2007*

*Amended by Act No. 2008-776 of 4 August 2008 Art. 158 Official Journal of 5 August 2008*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 71 Official Journal of 23 October 2010*

Article L. 515-16. – Under the terms and conditions laid down in a decree issued following consultation with the Conseil d'Etat, the shares or debt instruments issued by securitisation schemes, as well as the shares or debt instruments issued by similar entities subject to the law of a Member State of the European Community or of a State party to the European Economic Area Agreement, of the United States of America, of Switzerland, of Japan, of Canada, of Australia or of New Zealand, shall be deemed equivalent to the loans and exposures referred to in Articles L. 515-14 and L. 515-15, subject to following conditions being met:

1. Save for the sums that are momentarily available pending allocation, the assets of said securitisation schemes or of similar entities consist of the guarantees, sureties or other liens they have the benefit of and the securities retained by said securitisation schemes or similar entities as reserves or guarantees pursuant to the provisions that govern them, at a level of at least 90%, and of receivables of the same type as the loans and exposures having the characteristics described in paragraph I of Article L. 515-14 and in Article L. 515-15, or the receivables linked to guarantees equivalent those of the loans and exposures referred to in Articles L. 515-14 and L. 515-15, with the exception of the specific units or debt instruments that cover the risk of default of the debtors of the receivables;

2. Said shares or securities shall have the benefit of the highest level of credit quality established by an external credit rating agency recognised by the Autorité de Contrôle Prudentiel pursuant to Article L. 511-44.

3. Where the assets consist wholly or partly of loans or exposures referred to in L. 515-14, said similar entities must be subject to the law of a Member State of the European Community or of a State party to the European Economic Area Agreement.

*Amended by Act No. 2001-1168 of 11 December 2001 Art. 31 III Official Journal of 12 December 2001*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 95 3 Official Journal of 2 August 2003*

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 65 Official Journal of 7 May 2005*

*Replaced by Order No. 2007-571 of 19 April 2007 Art. 2 Official Journal of 20 April 2007*

*Amended by Order No. 2008-556 of 13 June 2008 Art. 16 Official Journal of 14 June 2008*

*Amended by Act No. 2008-776 of 4 August 2008 Art. 158 Official Journal of 5 August 2008*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Article L. 515-16-1. – The promissory notes governed by Articles L. 313-42 et seq shall be deemed equivalent to the loans and exposures referred to in L. 515-14 where the receivables discounted by them meet the conditions referred to in Article L. 515-14. The outstanding total of said promissory notes cannot exceed 10% of the real-estate credit company's assets.

*Inserted by Order No. 2007-571 of 19 April 2007 Art. 2 Official Journal of 20 April 2007*

Article L. 515-17. – Under conditions stipulated in a decree issued following consultation with the Conseil d'Etat, securities, instruments and deposits which are sufficiently secure and liquid may be held as replacement instruments by real-estate credit companies. Said decree determines the maximum portion that such replacement instruments may represent.

*Replaced by Order No. 2007-571 of 19 April 2007 Art. 2 Official Journal of 20 April 2007*

Article L. 515-17-1. – The real-estate credit companies shall ensure that their cash requirements are at all times covered pursuant to terms and conditions set laid down decree.

*Inserted by Act No. 2010-1249 of 22 October 2010 Art. 71 Official Journal of 23 October 2010*

Article L. 515-17-2. – Each quarter, the real-estate credit companies publish information relating to the quality and term of the loans, securities and instruments to be financed.

*Inserted by Act No. 2010-1249 of 22 October 2010 Art. 71 Official Journal of 23 October 2010*

Article L. 515-18. – In order to provide cover for the management transactions relating to the loans and exposures referred to in Articles L. 515-14 to L. 515-17, and for the real-estate bonds or other facilities having the benefit of the preferred status defined in Article L. 515-19, Real-estate credit companies may use financial futures, as defined in Article Land. 211-1.

However, the sums due under the financial futures contracts entered into by real-estate credit companies to cover their assets and liabilities items, after clearing where applicable, shall have the preferred status referred to in Article L. 515-19 in the same way as the sums due under the financial futures contracts entered into

by real-estate credit companies to manage or cover the global risk on their assets, liabilities and off-balance-sheet items.

The sums due under the financial futures contracts used to cover the transactions referred to in paragraph II of Article L. 515-13 do not have said preferred status.

The securities, sums and instruments received by a real-estate credit company to guarantee the hedging transactions referred to in this article are not taken into account for calculation of the maximum portion referred to in Article L. 515-17.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 94 2 Official Journal of 2 August 2003*

*Replaced by Order No. 2007-571 of 19 April 2007 Art. 2 Official Journal of 20 April 2007*

### Subsection 3 Preferential status of the receivables deriving from the transactions

Article L. 515-19. – Notwithstanding any legislative provisions to the contrary, and in particular those of Book VI of the Commercial Code:

1. 1. The sums deriving from loans or similar receivables, exposures, securities and instruments referred to in Articles L. 515-14 to L. 515-17, financial instruments referred to in Article L. 515-18, after settlement where applicable, and receivables resulting from deposits made with credit institutions by the real-estate credit company, shall be allocated prioritarily to the servicing of payment of the real-estate bonds and other preferred facilities referred to in Article L. 515-13(I, 2);

2. Where a court-ordered safeguard procedure, receivership procedure or liquidation procedure, or an amicable settlement procedure, is brought against a real-estate credit company, the receivables duly derived from the transactions referred to in Article L. 515-13(I, 2) shall be paid on their contractual due date with priority over all other receivables, regardless of whether the latter have preferred status or sureties, including the interest resulting from contracts, regardless of their term. Until such time as the holders of preferred debts within the meaning of this article are fully paid off, no other creditor of the real-estate credit company may avail itself of any right whatsoever over said company's property and rights;

3. The court-ordered liquidation of a real-estate credit company shall not have the effect of making the bonds and other preferred receivables referred to in paragraph 1 of this article payable.

The rules set forth in paragraphs 1 and 2 above shall apply to the fees associated with the transactions referred to in Article L. 515-13(I, 1, 2) and also to the sums, if any, due under the contract referred to in Article L. 515-22.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 96 II 1 Official Journal of 2 August 2003*

*Amended by Act No. 2005-845 of 26 July 2005 Art. 165 Official Journal of 27 July 2005*

*Amended by Order No. 2007-571 of 19 April 2007 Art. 2 Official Journal of 20 April 2007*

### Subsection 4 Rules governing the real-estate credit companies' transactions

Article L. 515-20. – The total amount of the real-estate credit companies' assets items must be greater than the amount of their liabilities items having the preferred status referred to in Article L.

515-19. The Minister for the Economy shall determine the valuation procedures for said assets and liabilities items.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 VI 1 Official Journal of 2 August 2003*

Article L. 515-21. – The assignment to a real-estate credit company of the loans and exposures referred to in Article L. 515-13, along with the associated receivables, takes place via delivery of a simple advice note to the assignee, the wording of which is determined by decree. Notwithstanding any court-ordered safeguard procedure, receivership procedure or liquidation procedure brought against the assignor subsequent to the assignment, the assignment shall take effect between the parties and become binding on third parties on the date indicated on the advice note as the date of service, regardless of the origination date, the maturity date or the due date of the receivables, and without any other formality being necessary, regardless of the law applicable to the receivables and the law of the debtors' country of domicile. Delivery of the advice note shall, of itself, entail the transfer of the sureties, guarantees and ancillary items attached to each loan and to each exposure, including any mortgage securities, as well as its enforceability against third parties, without any other formality being necessary.

Where the receivables derive from a leasing contract, the commencement of any court-ordered safeguard procedure, receivership procedure or liquidation procedure against the assigning lessor during the term of the contract shall not jeopardize the continuance of the leasing contract.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 96 III 1 Official Journal of 2 August 2003*

*Amended by Order No. 2007-571 of 19 April 2007 Art. 2 Official Journal of 20 April 2007*

Article L. 515-21-1. – Where some or all of the payments due under a partnership agreement or an agreement referred to in the first paragraph of Article L. 6148-5 of the French Public Health Code in respect of the investments costs, which include, inter alia, the study and design costs, the construction costs and ancillary expenses, the preliminary financial costs and the financing costs, is assigned pursuant to Article L. 515-21 of this code, the agreement may provide for said assignment to be subject to formal acceptance by the public legal entity as provided for hereunder and application of the limit indicated in Article L. 313-29-2.

The acceptance governed by this article shall be recorded, under pain of being declared null and void, in a document entitled "Deed of acceptance of assignment of receivables to a real-estate credit company" and shall be contingent upon confirmation from the contracting public legal entity that the investments were made in accordance with the terms of the agreement. With effect from said confirmation, and unless, by acquiring the debt, the real-estate credit company knowingly acted to the detriment of the public debtor, the public legal entity shall be required to pay the assigned debt directly to the real-estate credit company and no compensation and no plea founded on the debtor's personal relations with the holder of the participant agreement or of the agreement referred to in the first paragraph of Article L. 6148-5 of the Public Health Code, such as the annulment, cancellation or termination of the agreement, may be raised against the real-estate credit company, apart from the four-year prescription introduced by Act No. 68-1250 of 31 December 1968 relating to the prescription of receivables on the State, the *départements*, the *communes* and the public institutions.

The agreement holder shall be required to settle any debts it might owe to the contracting public legal entity on account of any non-fulfilment of its contractual obligations and, inter alia, on account of any penalties imposed on it; an

objection to an enforceable order issued by the public legal entity shall not have suspensive effect in respect of the amount which was covered by the acceptance in favour of the real-estate credit company.

The credit institution may, at any time, forbid the debtor of the assigned or pledged receivable from making payment to the signatory of the advice note. With effect from said notification, the form of which is determined in a decree issued following consultation with the Conseil d'Etat, the public debtor may effect valid settlement only to the real-estate credit company.

*Inserted by Act No. 2010-1249 of 22 October 2010 Art. 72 Official Journal of 23 October 2010*

Article L. 515-22. - The administration or the recovery of the loans, exposures, similar receivables, securities and instruments, bonds or other facilities referred to in Article L. 515-13 may be carried out only by a credit institution bound to the real-estate credit company by contract.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 96 II 2 Official Journal of 2 August 2003*

*Amended by Order No. 2007-571 of 19 April 2007 Art. 2 Official Journal of 20 April 2007*

Article L. 515-23. - The credit institution responsible for the administration of the loans, exposures, similar receivables, and securities and instruments shall be authorised to bring legal proceedings, as either plaintiff or defendant, and to exercise all enforcement procedures for and on behalf of the real-estate credit company.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 96 II 3 Official Journal of 2 August 2003*

*Amended by Order No. 2007-571 of 19 April 2007 Art. 2 Official Journal of 20 April 2007*

Article L. 515-24. - In the event of a different legal entity becoming responsible for administering or recovering the loans or similar debts, the debtors shall be informed thereof by ordinary letter.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 96 II 4° Official Journal of 2 August 2003*

### Subsection 5 Court-ordered safeguarding, receivership and liquidation

*Amended by Act No. 2005-845 of 26 July 2005 art 165 Official Journal of 27 July 2005*

Article L. 515-25. - The provisions of Article L. 632-2 of the Commercial Code shall not apply to agreements entered into by or with a real-estate credit company, or to legal transactions carried out by or on behalf of a real-estate credit company, given that said agreements or said transactions are directly related to the transactions referred to in Article L. 515-13.

*Amended by Act No. 2005-845 of 26 July 2005 annexe Official Journal of 27 July 2005*

Article L. 515-26. - Where a provisional administrator or a liquidator has been appointed to a real-estate credit company pursuant to Articles L. 612-34 and L. 613-24, the provisions of Article L. 613-25 shall apply.

*Amended by Order No. 2010-76 of 21 January 2010 Art. 5 Official Journal of 22 January 2010*

Article L. 515-27. - Notwithstanding any provisions to the contrary, and in particular those of Parts II to IV of Book VI of the Commercial Code, court-ordered safeguard procedure, receivership procedure or liquidation procedure brought against a company holding shares in a real-estate credit company cannot be extended to the real-estate credit company.

*Replaced by Act No. 2008-776 of 4 August 2008 Art. 78 Official Journal of 5 August 2008*

Article L. 515-28. - In the event of court-ordered safeguard procedure, receivership procedure or liquidation procedure being brought against a company responsible for administering or recovering loans, exposures, similar receivables, instruments and securities, bonds or other facilities referred to in Article L. 515-13 on behalf of a real-estate credit company, the agreements that provide for said administration or recovery may be immediately cancelled, notwithstanding any provisions to the contrary, and in particular those of Parts II to IV of Book VI of the Commercial Code.

*Replaced by Act No. 2008-776 of 4 August 2008 Art. 78 Official Journal of 5 August 2008*

### Subsection 6 Inspections

Article L. 515-29. - The Autorité de Contrôle Prudentiel monitors the real-estate credit companies' fulfilment of the obligations they assume pursuant to this section and penalises any recorded non-fulfilment as provided for in **Chapter II and in Sections 1 and 2 of Chapter III of Part I of Book VI**.

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Article L. 515-30. - In each real-estate credit company, a special inspector and a deputy special inspector chosen from among the individuals included on the list of statutory auditors shall be appointed for a term of four years by the company's senior managers, subject to a positive opinion from the Autorité de Contrôle Prudentiel.

The deputy special inspector shall be called upon to replace the incumbent in the event of the latter's refusal, impediment, resignation or death. His duties shall cease on the expiry date of the remit entrusted to the latter, unless the impediment is of a merely temporary nature. In the latter case, once the impediment has ceased, the incumbent shall resume his duties after drawing up the report referred to in the fifth paragraph of this article.

The statutory auditor of the real-estate credit company, the statutory auditor of any company controlling the real-estate credit company within the meaning of Article L. 233-3 of the Commercial Code, or the statutory auditor of a company directly or indirectly controlled by a company controlling the real-estate credit company, cannot be appointed as the special inspector or deputy special inspector.

The inspector shall ensure that the company is compliant with Articles L. 515-13 to L. 515-20 and shall verify that the contributions made to the real-estate credit company are consistent with the objective defined in Article L. 515-13 and that they meet the conditions set forth in Articles L. 515-14 to L. 515-17.

The inspector shall certify the documents sent to the Autorité de Contrôle Prudentiel relating to compliance with the preceding provisions. He shall draw up an annual report on the performance of his duties for the company's senior managers and



deliberative bodies, a copy of which shall be sent to the Autorité de Contrôle Prudentiel.

He may attend any meeting of shareholders and may address the Board of Directors or the Executive Board upon request.

The inspector, along with his staff and his experts, shall be bound by professional secrecy with regard to the facts, acts and information he has knowledge of on account of his duties. He is nevertheless released from professional secrecy with regard to the Autorité de Contrôle Prudentiel, to which he is required to immediately report any fact or decision he has become aware of in the performance of his duties which could jeopardize the situation or the continuing operation of the real-estate credit company. Professional secrecy is also lifted, within the framework of their respective duties, between the special inspector and the statutory auditors of the real-estate credit company and of any controlling company of the real-estate credit company within the meaning of Article L. 233-3 of the Commercial Code. The special inspector shall disclose to the Public Prosecutor any criminal acts he has knowledge of and shall not incur liability in relation to said disclosure.

He shall be liable towards both the company and third parties for the prejudicial consequences of any wilful misconduct or negligence committed by him in the performance of his duties.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 95 2 Official Journal of 2 August 2003*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Article L. 515-31. - Where court-ordered safeguard procedure, receivership procedure or liquidation procedure are brought against a real-estate credit company, the special inspector shall make the declaration stipulated in Article L. 622-24 of the Commercial Code for and on behalf of the holders of the preferred debts referred to in Article L. 515-19.

The provisions of Articles L. 823-7, L. 823-13, L. 823-14, L. 823-18, L. 822-18, L. 820-4 to L. 820-7, L. 822-6, L. 822-7 and L. 822-10 to L. 822-13 of the Commercial Code and Article L. 612-44 of this code apply to the inspector. The Autorité de Contrôle Prudentiel may exercise the action referred to in Article L. 823-7 of the Commercial Code.

As an exception to the provisions of Article L. 823-14 of the Commercial Code, the inspector's right to information may extend to sight of the papers, contracts and documents held by the company responsible for administering or recovering the loans, exposures, similar receivables, securities and instruments, bonds and other assets, pursuant to Article L. 515-22, provided that said data, contracts and documents are directly related to the tasks performed by said company on behalf of the real-estate credit company.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 96 5, Art.116 Official Journal of 2 August 2003*

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 66 Official Journal of 7 May 2005*

*Amended by Act No. 2005-845 of 26 July 2005 annexe Official Journal of 27 July 2005*

*Amended by Act No. 2005-845 of 26 July 2005 Art. 165 Official Journal of 27 July 2005*

*Amended by Order No. 2005-1126 of 8 September 2005 Art. 22 Official Journal of 9 September 2005*

*Amended by Order No. 2007-571 of 19 April 2007 Art. 2 Official Journal of 20 April 2007*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 5 Official Journal of 22 January 2010*

## Subsection 7 Miscellaneous provisions

Article L. 515-32. – Article L. 228-39 of the Commercial Code shall not apply to real-estate credit companies.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 94 3 Official Journal of 2 August 2003*

*Amended by Order No. 2004-604 of 24 June 2004 Art. 52 Official Journal of 17 April 2004.*

*Amended by Order No. 2004-1382 of 20 December 2004 Art. 8 Official Journal of 22 December 2004.*

Article L. 515-32-1. – As an exception to Articles 1300 of the Civil Code and L. 228-44 and L. 228-74 of the Commercial Code, real-estate credit companies may subscribe their own real-estate bonds for the sole object of guaranteeing the credit transactions of the Banque de France in accordance with the procedures and conditions determined by the latter for its monetary policy and intra-day credit transactions in the event of real-estate credit companies being unable to cover their cash requirements via the other means at their disposal.

The real-estate bonds thus subscribed must meet the following conditions:

1 The maximum portion they may represent is 10% of the total assets outstanding with preferred status as of the date of acquisition;

2 They shall be stripped of the rights referred to in Articles L. 228-46 to L. 228-89 of the Commercial Code throughout the entire period during which they are held by the real-estate credit company;

3 They shall be allocated to the Banque de France by way of guarantee. Failing this, they shall be cancelled within eight days;

4 They cannot be subscribed by third parties.

The special controller shall attest to the observance of said conditions and shall draw up a report for the Autorité de Contrôle Prudentiel.

*Inserted by Act No. 2010-1249 of 22 October 2010 Art. 71 Official Journal of 23 October 2010*

Article L. 515-33. The implementing provisions of this section are determined in a decree issued following consultation with the Conseil d'Etat.

*(Section 5 and Article L. 515-34, deleted by Order No. 2006-1048 of 25 August 2006 Art. 7 Official Journal of 26 August 2006)*

## Section 5 Housing loan companies

*Section inserted by Act No. 2010-1249 of 22 October 2010 Art. 73 Official Journal of 23 October 2010*

Article L. 515-34. – Housing loan companies are credit institutions granted finance company status by the Autorité de Contrôle Prudentiel.

Housing loan companies have as their sole object the granting or financing of housing loans and the holding of shares and instruments as provided for in a decree issued following consultation with the Conseil d'Etat. Said companies are governed by Articles L. 515-14, L. 515-16 and

L. 515-17 to L. 515-32-1, subject to the provisions of this section.

*Inserted by Act No. 2010-1249 of 22 October 2010 Art. 73 Official Journal of 23 October 2010*

Article L. 515-35. – I. – In order to achieve their object, housing loan companies may:

1 Grant loans to any credit institution which are guaranteed by delivery, assignment or pledge of receivables referred to in paragraph II while having the benefit of the provisions of Articles L. 211-36 to L. 211-40 or of Articles L. 313-23 to L. 313-35, regardless of whether said receivables are commercial in nature;

2 Acquire promissory notes issued by any credit institution under the terms and conditions laid down in Articles L. 313-43 to L. 313-48 which, as an exception to Article L. 313-42, discount the receivables referred to in paragraph II of this article;

3 Grant the housing loans referred to in said paragraph II.

II. – The housing loans granted or financed by housing loan companies are:

1 Intended, wholly or partly, for the financing of a residential property located in France or in another Member State of the European Union or another State party to the European Economic Area Agreement or a State having the benefit of the highest level of credit quality established by an external credit rating agency recognised by the Autorité de Contrôle Prudentiel pursuant to Article L. 511-44;

2 And are guaranteed by:

a) A first-ranking mortgage or a charge over real-estate which provides a guarantee at least equal thereto;

b) Or a guarantee granted by a credit institution or an insurance company.

IV- Real-estate credit companies may acquire and own any movable or immovable property which is necessary for the achievement of their corporate purpose or acquired through recovery of their debts.

IV. – They cannot hold equity interests.

*Inserted by Act No. 2010-1249 of 22 October 2010 Art. 73 Official Journal of 23 October 2010*

Article L. 515-36. – I. – In order to finance the transactions referred to in Article L. 515-35, housing loan companies may issue bonds known as housing finance bonds having the preferred status referred to in Article L. 515-19 and may receive facilities having an issuing contract or document within the meaning of Article L. 412-1, or any equivalent document required for admission to trading on foreign regulated markets, which refers to said preferred status.

II. – Housing loan companies may also receive other facilities which do not have the preferred status referred to in Article L. 515-19, through:

1 Bonds or facilities whose issuing contract or document within the meaning of Article L. 412-1, or any equivalent document required for admission to trading on foreign regulated markets, does not confer the benefit of the preferred status referred to in Article L. 515-19;

2 Issuance of promissory notes, under the terms and conditions laid down in Articles L. 313-43 to L. 313-48 which, as an exception to Article L. 313-42, discount receivables referred to in paragraph II of Article L. 515-35;

3 Notwithstanding any provision or stipulation to the contrary, temporary assignment of their securities as provided for in Articles L. 211-22 to L. 211-34, pledge of securities as described in Article L. 211-20 and discounting of some or all of the receivables they hold pursuant to Articles L. 211-36 to L. 211-40 or pursuant to Articles L. 313-23 to L. 313-35, regardless of whether said receivables are commercial in nature. In which case, the statements on the advice note referred to in Article L. 313-23 are determined by decree.

The receivables or securities discounted or assigned are not included in the scope of the preferred status referred to in Article L. 515-19 and are not entered in the books by the housing loan companies by virtue of Article L. 515-20.

*Inserted by Act No. 2010-1249 of 22 October 2010 Art. 73 Official Journal of 23 October 2010*

Article L. 515-37. – Article L. 632-2 of the Commercial Code shall not apply to contracts entered into by a housing loan company or to legal transactions carried out by a housing loan company or on its behalf where said contracts or said legal transactions relate directly to the transactions referred to in Articles L. 515-34 to L. 515-36 of this code.

*Inserted by Act No. 2010-1249 of 22 October 2010 Art. 73 Official Journal of 23 October 2010*

Article L. 515-38. – In each housing loan company, the special inspector referred to in Article L. 515-30 shall ensure observance by the company of Articles L. 515-34 to L. 515-36.

He shall also ensure that the housing loans granted or financed by the housing loan company comply with the object defined in Article L. 515-34 and meet the conditions set forth in Articles L. 515-35 and L. 515-36.

Where the housing loans granted or financed by the housing loan company are linked to a guarantee from a credit institution or an insurance company included in the consolidation scope described in Article L. 233-16 of the Commercial Code which the housing loan company comes under, the special inspector shall be authorised to carry out any on-the-spot inspection in order to determine whether the risk-assessment methods implemented by said credit institution or said insurance company are appropriate.

*Inserted by Act No. 2010-1249 of 22 October 2010 Art. 73 Official Journal of 23 October 2010*

Article L. 515-39. The implementing provisions of this section are determined in a decree issued following consultation with the Conseil d'Etat.

*Inserted by Act No. 2010-1249 of 22 October 2010 Art. 73 Official Journal of 23 October 2010*

## Chapter VI Specialised financial institutions

Article L. 516-1. – The specialised financial institutions are credit institutions to which the State has entrusted a permanent public-interest mission. They cannot carry out banking transactions which do not relate to said mission, unless they are of minor importance.

Article L. 516-2. - The specialised financial institutions cannot accept on-demand deposits, or term deposits of less than two years, from the public unless they are authorised to do so on a secondary basis under the conditions set forth by the Minister for the Economy.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 VI 1 Official Journal of 2 August 2003*

## **Chapter VII Financial holding companies and financial conglomerates**

*Part Amended by Order No. 2004-1201 of 12 November 2004 Art. 6 Official Journal of 16 November 2004*

### **Section 1 Definitions**

*Section inserted by order No. 2004-1201 of 12 November 2004 Art. 6 Official Journal of 16 November 2004*

#### **Subsection 1 Financial holding companies**

*Subsection inserted by order No. 2004-1201 of 12 November 2004 Art. 6 Official Journal of 16 November 2004*

A financial holding company is a financial institution within the meaning of Article L. 511-21 which has as its subsidiaries, exclusively or principally, one or more credit institutions or investment firms or financial institutions and which is not a mixed financial holding company within the meaning of Article L. 517-4 of this code. At least one of said subsidiaries must be a credit institution or an investment firm.

*Inserted by Order No. 2004-1201 of 12 November 2004 Art. 6 Official Journal of 16 November 2004*

#### **Subsection 2 Financial conglomerates**

*Subsection inserted by order No. 2004-1201 of 12 November 2004 Art. 6 Official Journal of 16 November 2004*

Article L. 517-2. I. - For the purposes of the additional supervision referred to in Chapter III of Part III of Book VI, the following terms shall have the meanings indicated below:

1. "Regulated entity": a credit institution, an insurance company, a reinsurance company or an investment firm having its registered office in a Member State or in another State party to the European Economic Area Agreement;

2. "Sectoral rules": the rules relating to the prudential supervision of the regulated entities;

3. "Financial sector": a sector composed of one or more entities belonging to the following sectors:

a) The banking and investment services sector, which includes credit institutions, investment firms, financial institutions or firms of a financial nature having their registered office in a Member State or in another State party to the European Economic Area Agreement;

b) The insurance sector, which includes insurance companies, insurance groups, mutual societies, mutual unions, provident institutions, provident-institution unions, joint provident groups or reinsurance companies whose registered office is located in a Member State or in another State party to the European Economic Area Agreement.

The financial sector also includes, where applicable, one or more mixed financial holding companies;

4. "Competent authority": any national authority in a member State or in another State party to the European Economic Area Agreement empowered by that State's laws or regulations to supervise one or more of the following categories of entities at an individual or group level:

- a) Credit institutions;
- b) Insurance companies;
- c) Mutual societies;
- d) Provident institutions;
- e) Investment firms;
- f) Reinsurance companies.

5. "Competent authority concerned":

a) Any competent authority responsible for the consolidated sectoral supervision of the regulated entities belonging to a financial conglomerate;

b) The coordinator designated pursuant to Article L. 633-2 of this code, if it is not an authority referred to in a);

c) Other competent authorities, when the authorities referred to in a) and b) consider this appropriate.

*Inserted by Order No. 2004-1201 of 12 November 2004 Art. 6 Official Journal of 16 November 2004*

*Amended by Order No. 2008-556 of 13 June 2008 Art. 6 Official Journal of 14 June 2008*

Article L. 517-3. I- A group within the meaning of Article L. 511-20 constitutes a financial conglomerate where the following conditions are met:

1 Where the principal company of the group is a regulated entity or at least one of the group's subsidiaries is a regulated entity and:

a) Where the principal company of the group is a regulated entity and is the parent company of a financial sector entity: either an entity that holds an equity interest in a financial sector entity or an entity linked to a financial sector entity within the meaning of paragraph 3 of Article L. 511-20;

b) Where the principal company of the group is not a regulated entity, its business must be conducted mainly in the financial sector;

2 Where at least one of the group's entities is in the insurance sector and at least one is in the banking and investment services sector;

3 Where the consolidated or aggregate business of the group's entities in the insurance sector and the consolidated or aggregate business of said entities in the banking and investment services sector is substantial;

II- The following are determined by the applicable regulations:

1 The thresholds above which a group's business shall be deemed to be conducted mainly in the financial sector;

2 The thresholds above which the business in each sector shall be deemed to be substantial;

3 The thresholds, criteria or conditions based on which the competent authorities concerned may decide by mutual agreement not to regard the group as a financial conglomerate or not to apply to it the provisions relating to additional supervision.

III. - Any sub-group of a group which meets the criteria indicated in paragraph I of this article shall be exempted from the additional supervision scheme if it belongs to a group which is identified as a financial conglomerate and is therefore subject to additional supervision. Nevertheless, the conglomerate's

coordinator or the coordinator likely to be appointed pursuant to Article L. 633-2 for the sub-group's additional supervision may, through a grounded decision, make the sub-group subject to additional supervision as provided for in the regulations.

*Inserted by Order No. 2004-1201 of 12 November 2004 Art. 6 Official Journal of 16 November 2004*

Article L. 517-4. A mixed financial holding company is a parent company, other than a regulated entity, having its registered office in a Member State or in another State party to the European Economic Area Agreement, which, with its subsidiaries, at least one of which must be a regulated entity, constitutes a financial conglomerate.

*Inserted by Order No. 2004-1201 of 12 November 2004 Art. 6 Official Journal of 16 November 2004*

## Section 2: General provisions

*Section inserted by order No. 2004-1201 of 12 November 2004 Art. 6 Official Journal of 16 November 2004*

### Subsection 1 Financial holding companies

*Subsection inserted by order No. 2004-1201 of 12 November 2004 Art. 6 Official Journal of 16 November 2004*

Article L. 517-5. - Financial holding companies are subject to the provisions of the second paragraph of Article L. 511-13, Article L. 511-21, Articles L. 511-35 to L. 511-38, L. 511-41, L. 511-41-2, L. 517-3, L. 517-4, L. 511-41-3, L. 612-24, L. 612-26 and L. 612-27, L. 612-31 to L. 612-34, L. 612-40, L. 612-44 and L. 613-24 as determined in the regulations.

The statutory auditors of said companies are also subject to all the provisions applicable to the statutory auditors of credit institutions and investment firms.

*Inserted by Order No. 2004-1201 of 12 November 2004 Art. 6 Official Journal of 16 November 2004*

*Amended by Order No. 2007-571 of 19 April 2007 Art. 3 Official Journal of 20 April 2007*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 5 Official Journal of 22 January 2010*

### Subsection 2 Financial conglomerates

*Subsection inserted by order No. 2004-1201 of 12 November 2004 Art. 6 Official Journal of 16 November 2004*

Article L. 517-6. - The regulated entities belonging to a financial conglomerate are subject to the additional supervision provided for in this subsection and in Articles L. 633-1 to L. 633-14, without prejudice to the relevant sectoral rules.

*Inserted by Order No. 2004-1201 of 12 November 2004 Art. 6 Official Journal of 16 November 2004*

Article L. 517-7. I- The additional supervision applicable to conglomerates shall apply to regulated entities that meet one of the following criteria:

1. It is the conglomerate's principal company;
2. Its parent company is a mixed financial holding company having its registered office in a Member State or in another State party to the European Economic Area Agreement;
3. It is linked to another financial sector entity within the meaning of paragraph 3 of Article L. 511-20.

II- In cases other than those referred to in paragraph I and in Article L. 633-14, where individuals or legal entities hold an equity

interest in one or more regulated entities, or have a participating-interest link with such entities or exert substantial influence over them which does not derive from either an equity interest or a participating-interest link, the competent authorities concerned shall, by mutual agreement and from the standpoint of the additional supervision objectives, determine whether, and to what extent, additional supervision of the type applied to a financial conglomerate should be applied to the regulated entities included in said group.

The conditions set forth in Article L. 517-3(I, 2, 3) must be met in order for such additional supervision to be applied.

*Inserted by Order No. 2004-1201 of 12 November 2004 Art. 6 Official Journal of 16 November 2004*

Article L. 517-8. - As determined in the regulations, regulated entities belonging to a financial conglomerate shall be subject to additional requirements with regard to equity-capital adequacy, transactions between the different entities in the conglomerate, concentration and management of risks and internal auditing.

*Inserted by Order No. 2004-1201 of 12 November 2004 Art. 6 Official Journal of 16 November 2004*

Article L. 517-9. - Mixed financial holding companies whose coordinator is the Autorité de Contrôle Prudentiel are subject to the provisions of the second paragraph of Article L. 511-13, those of Articles L. 511-35 to L. 511-38 and the additional supervision referred to in Article L. 517-8.

They are, moreover, subject to the obligations laid down in Articles L. 511-41-2 and L. 533-4-1 relating to the banking sector and investment services.

*Inserted by Order No. 2004-1201 of 12 November 2004 Art. 6 Official Journal of 16 November 2004*

*Amended by Order No. 2007-571 of 19 April 2007 Art. 3 Official Journal of 20 April 2007*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

## Chapter VIII Institutions and units authorised to process banking transactions

### Section 1: General provisions

Article L. 518-1. - The Trésor public, the Banque de France, La Poste, under the terms set forth in Article L. 518-25, the issuing institution of the Overseas *départements* (Institut d'Émission des *départements* d'Outre-Mer), the Overseas Issuing Institution (Institut d'Émission d'Outre-Mer) and the Caisse des Dépôts et Consignations shall not be subject to the provisions of Chapters I to VII of this Part.

Said institutions and *départements* may carry out the banking transactions provided for by the laws and regulations which govern them.

The orders of the Minister for the Economy issued pursuant to Articles L. 611-1, L. 611-3 and L. 611-4, and the rules of the Autorité des Normes Comptables (Autorité des Normes Comptables, ANC) may, without prejudice to the necessary adaptations, and as determined in a decree issued following consultation with the Conseil d'Etat, be extended to La Poste, as provided for in Article L. 518-25, and also to the competent public accountants.

*Amended by Order No. 2000-1223 of 14 December 2000, rectification*



*Amended by Act No. 2001-420 of 15 May 2001 Art. 143 I Official Journal of 16 May 2001*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 III 10 Official Journal of 2 August 2003*

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 68 Official Journal of 7 May 2005*

*Amended by Act No. 2005-516 of 20 May 2005 relating to the regulation of postal activities Art. 16 IV/2 Official Journal of 21 May 2005*

*Amended by Act No. 2008-776 of 4 August 2008 Art. 151 Official Journal of 5 August 2008*

*Amended by Order No. 2009-79 of 22 January 2009 Art. 6 Official Journal of 23 January 2009*

*Amended by Order No. 2010-420 of 27 April 2010 Art. 112 Official Journal of 30 April 2010*

## Section 2 The Caisse des Dépôts et Consignations

Article L. 518-2. - The Caisse des Dépôts et Consignations and its subsidiaries constitute a public group in the service of the country's general interest and economic development. Said group fulfils public interest duties in support of the public policies pursued by the State and the local authorities and may engage in competitive activities.

The Caisse des Dépôts et Consignations is a special institution responsible for the administration of deposits and consignments, the provision of services relating to the funds whose management has been entrusted to it, and the performance of other similar duties which are legally delegated to it. It is responsible for the protection popular savings, the financing of social housing and the management of pension schemes. It also contributes to local and national economic development, particularly in the spheres of employment, urban policy, combating exclusion from banking and finance, company start-ups and sustainable development.

The Caisse des Dépôts et Consignations is a long-term investor and contributes, consistent with its proprietary interests, to the development of companies.

The Caisse des Dépôts et Consignations is placed, in the most exceptional manner, under the supervision and guarantee of the legislative authorities.

It is organised as determined in a decree issued following consultation with the Conseil d'Etat on a proposal from the Supervisory Commission (Commission de Surveillance).

*Amended by Act No. 2008-776 of 4 August 2008 Art. 151 Official Journal of 5 August 2008*

Article L. 518-2-1. - The Caisse des Dépôts et Consignations may issue the debt instruments referred to in Article L. 211-1(II, 2).

*Inserted by Act No. 2005-842 of 26 July 2005 Art. 28 Official Journal of 27 July 2005*

*Amended by Order No. 2009-15 of 8 January 2009 Art. 4 Official Journal of 9 January 2009*

Article L. 518-3. - Decrees whose implementation requires the cooperation of the Caisse des Dépôts et Consignations are issued on the basis of a report from, or after the participation of, the Minister for the Economy, and after the Supervisory Commission's opinion has been sought.

## Subsection 1 Supervisory Commission

### Paragraph 1 Composition

Article L. 518-4. - The Supervisory Commission is composed of:

1 Three members of the National Assembly commission responsible for finance, elected by said assembly, at least one of whom must belong to a group which has stated that it does not support the Government;

2 Two members of the Senate commission responsible for finance, elected by said assembly;

3 A member of the Conseil d'Etat, designated by said conseil;

4 Two members of the Court of Auditors (Cour des Comptes), designated by said court;

5 The Governor or one of the Deputy Governors of the Banque de France, appointed by said bank;

6 The director general of the Treasury of the ministry responsible for the economy, or his representative;

7 Two members designated on account of their expertise in the spheres of finance, accounting or economics, or in that of management, by the President of the lower house of the French Parliament (Assemblée nationale);

8 A member designated on account of his expertise in the spheres of finance, accounting or economics, or in that of management, by the President of the Senate.

*Replaced by Act No. 2008-776 of 4 August 2008 Art. 151 Official Journal of 5 August 2008*

*Amended by Decree No. 2010-291 of 18 March 2010 Art. 2 Official Journal of 19 March 2010*

Article L. 518-5. - The Supervisory Commission elects its chairman from among the members of parliament that comprise it.

In the event of there being a hung vote, the chairman shall have a casting vote.

*Amended by Act No. 2008-776 of 4 August 2008 Art. 151 Official Journal of 5 August 2008*

Article L. 518-6. - The appointments are made for three years and are published in the Official Journal.

The Supervisory Commission determines in its internal regulation the arrangements for preventing conflicts of interest, particularly with regard to the declarations of interests the members must make to its chairman.

*Replaced by Act No. 2008-776 of 4 August 2008 Art. 151 Official Journal of 5 August 2008*

### Paragraph 2 Missions

Article L. 518-7. - The Supervisory Commission is responsible for supervising the Caisse des Dépôts et Consignations. It monitors the management of the fund referred to in Article L. 221-7. Said activities are reported in a special chapter of the annual report presented to Parliament by the Supervisory Commission pursuant to Article L. 518-10.

The prior opinion of the Supervisory Commission is sought each year concerning the Caisse des Dépôts et Consignations'

debt instrument issuance programme. It determines the maximum annual volume of said debt instruments.

The Supervisory Commission is consulted at least once each year concerning the following points:

1 The strategic positioning of the public institution and of its subsidiaries;

2 The implementation of the public interest functions of the Caisse des Dépôts et Consignations;

3 The determination of the investment strategy of the public institution and of its subsidiaries;

4 The financial situation and the cash situation of the public institution and the group's policy with regard to internal auditing;

5 The consolidated corporate accounts and their appendices, the scope and methods of consolidation, the answers to the observations of the external auditors and the examination of the significant off-balance-sheet commitments.

Whenever they consider it appropriate, and at least once each month, the members of the Supervisory Commission verify the status of the funds and the proper maintenance of the accounts.

The Supervisory Commission's internal regulation lays down its operating rules.

*Amended by Act No. 2005-842 of 26 July 2005 Art. 28 Official Journal of 27 July 2005*

*Amended by Act No. 2008-776 of 4 August 2008 Art. 151 Official Journal of 5 August 2008*

Article L. 518-8. - The Supervisory Commission has specialised advisory sub-commissions, in particular the Accounts Inspection and Risk Assessment Commission (Comité d'examen des Comptes et des Risques), the Savings Funds Commission (Comité des Fonds d'Épargne) and the Investments Commission (Comité des Investissements).

It determines their remit and their operating rules in its internal regulation.

The investments commission is tasked with overseeing the implementation of the Caisse des Dépôts et Consignations' investment policy. It is consulted prior to transactions that result in the Caisse des Dépôts et Consignations buying or selling equity securities or securities giving access to a company's capital above the thresholds stipulated in the Supervisory Commission's internal regulation.

*Replaced by Act No. 2008-776 of 4 August 2008 Art. 151 Official Journal of 5 August 2008*

Article L. 518-9. - The committee may send observations to the director general, which he is not obliged to act upon.

The director general shall give the Supervisory Commission all the documents and information it requires to carry out its supervision.

The Supervisory Commission may decide to make its opinions known to the public.

*Amended by Act No. 2008-776 of 4 August 2008 Art. 151 Official Journal of 5 August 2008*

### Paragraph 3 Report to Parliament

Article L. 518-10. - The Supervisory Commission's report on the institution's corporate management and material situation during the previous year shall be sent to Parliament before 30 June.

Said report contains, inter alia, the minutes of the commission's meetings for the relevant year, to which the opinions, motions or resolutions it has voted on are appended, as well as the interim statement of source and application of funds for the general section and the savings sections, which shall be presented to the commission during the first quarter.

*Amended by Act No. 2008-776 of 4 August 2008 Art. 151 Official Journal of 5 August 2008*

## Subsection 2 Administration of the Caisse des Dépôts et Consignations

### Paragraph 1 Director general

Article L. 518-11. - The Caisse des Dépôts et Consignations is managed and administered by a director general appointed for five years.

The director general takes an oath before the Supervisory Commission.

He may be dismissed from his post after the Supervisory Commission has given its opinion, which it may decide to make public, or on a proposal from said committee.

Article L. 518-12. - The director general is responsible for the management of the CDC's funds and securities.

He presents the following year's budget to the Supervisory Commission before the year-end. Said draft budget, accompanied by the committee's opinion, shall be submitted to the Minister for the Economy for approval.

### Paragraph 2 General cashier

Article L. 518-13. The general cashier is responsible for the administration of the funds. He oversees collection thereof, payment of expenses, and safekeeping and custody of the securities. He provides a guarantee, the amount of which is determined by the applicable regulations, on a proposal from the committee.

He takes an oath before the Court of Auditors after providing evidence to the Treasury concerning his guarantee.

He shall be held liable for any errors and deficits other than those attributable to force majeure.

### Paragraph 3 Staff of the Caisse and help by Treasury accountants (1)

Amendment pending: public accountants

Article L. 518-14. - The Caisse des Dépôts et Consignations has staff to provide the service entrusted to it in every town which has a Regional Court.

The director general may call upon the public accountants of the State to deal with collections and payments pertaining to the Caisse des Dépôts et Consignations in the *départements*.

The compensation granted in consideration of said service shall be jointly decided by the Minister for the Economy and the Supervisory Commission.

*Amended by Order No. 2010-420 of 27 April 2010 Art. 112 Official Journal of 30 April 2010*

#### Paragraph 4 Auditing by the Court of Auditors

Article L. 518-15. - Auditing of the Caisse des Dépôts et Consignations by the Court of Auditors shall be carried out within the scope of Article L. 131-3 of the French Financial Courts Code.

#### Paragraph 5 Presentation and certification of the accounts

*Inserted by Act No. 2006-387 of 31 March 2006 Art. 26 Official Journal of 1 April 2006*

Article L. 518-15-1. – Each year, the Caisse des Dépôts et Consignations shall present to the commissions of the Assemblée nationale and of the Senate responsible for financial affairs its annual and consolidated accounts, certified by two statutory auditors. In the event of certification being refused, the statutory auditors' report shall be attached to the accounts. The Supervisory Commission of the Caisse des Dépôts et Consignations shall appoint the statutory auditors and their deputies on a proposal from the director general.

*Inserted by Act No. 2006-387 of 31 March 2006 Art. 26 Official Journal of 1 April 2006*

*Amended by Act No. 2008-776 of 4 August 2008 Art. 151 Official Journal of 5 August 2008*

#### Paragraph 6 External auditing

*Inserted by Act No. 2008-776 of 4 August 2008 Art. 151 Official Journal of 5 August 2008*

Article L. 518-15-2. - A decree issued following consultation with the Conseil d'Etat after advice was sought from the Supervisory Commission extends the rules adopted pursuant to Article L. 511-36 and the first paragraph of Article L. 511-37 and Articles L. 511-40 and L. 511-41 to the Caisse des Dépôts et Consignations, subject to the necessary adaptations being made.

*Inserted by Act No. 2008-776 of 4 August 2008 Art. 151 Official Journal of 5 August 2008*

Article L. 518-15-3. - The Supervisory Commission entrusts the verification, as described in Articles L. 612-17, L. 612-23 to L. 612-27 and L. 612-44, of the Caisse des Dépôts et Consignations' compliance with the provisions referred to in Article L. 518-15-2, specifically for the audit of the banking and financial activities.

The Supervisory Commission shall deliberate on the reports of the Autorité de Contrôle Prudentiel, which may be accompanied by proposals for recommendations aimed at restoring or strengthening the financial position and, in the areas concerned, at improving the management methods or ensuring the adequacy of the organisation for the Caisse des Dépôts et Consignations' activities or development objectives. The Supervisory Commission may send warnings, recommendations or injunctions to the director general of the Caisse des Dépôts et Consignations, which it may decide to make public.

For the implementation of this article, Articles L. 571-4, L. 613-20-1 and L. 613-20-2 shall apply to the Caisse des Dépôts et Consignations group and to its senior managers.

*Inserted by Act No. 2008-776 of 4 August 2008 Art. 151 Official Journal of 5 August 2008*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 5 Official Journal of 22 January 2010*

#### Subsection 3 Allocation of the profits of the Caisse des Dépôts et Consignations

Article L. 518-16. - The Caisse des Dépôts et Consignations shall pay to the State each year on the net profit from its activities for its account and after payment of a contribution representing corporation tax, a fraction of said net profit determined after obtaining the opinion of the institution's Supervisory Commission as requested by the director general and pursuant to the laws and regulations which determine the institution's status.

#### Subsection 4 Transactions

##### Paragraph 1 Consignments and deposits

Article L. 518-17. - The Caisse des Dépôts et Consignations has responsibility for receiving deposits of any kind, in cash or in financial securities, as provided for in a law or regulation or ordered by a court decision or an administrative decision.

*Amended by Order No. 2009-15 of 8 January 2009 Art. 4 Official Journal of 9 January 2009*

Article L. 518-18. - The terms applicable to the depositing, custody and withdrawal of securities are determined in a decree issued following consultation with the Conseil d'Etat.

Article L. 518-19. - (inserted by Order No. 2000-1223 of 14 December 2000, Official Journal of 16 December 2000)

Jurisdictions and administrations cannot authorise or order that deposits be made with individuals, or with bodies other than the Caisse des Dépôts et Consignations, and authorise debtors, custodians, or involved third parties to act as a custodian or in any other capacity. Deposits made in violation of these provisions shall be null and void.

Article L. 518-20. - The director general of the Caisse des Dépôts et Consignations may impose, either directly or through the agents of the CDC, coercive measures against any individual or legal entity who/which, when required to pay monies into said Caisse or into that of its agents, fails to meet his/its obligations. Such coercive measures shall be executed in the same manner as those imposed with regard to registration, and implementation thereof shall be made known to the Public Prosecutors.

Article L. 518-21. - All the fees and risks relating to the safekeeping, custody and movement of the funds and financial securities deposited shall be borne by the Caisse des Dépôts et Consignations. The financial securities deposited shall not give rise to any safe-custody charge.

*Amended by Order No. 2009-15 of 8 January 2009 Art. 4 Official Journal of 9 January 2009*

Article L. 518-22. - The sums received in respect of arrears, interest, dividends, proceeds of redemption or trading and any other income from financial securities deposited shall not give entitlement to any liquidation or to any interest payment met by the Caisse des Dépôts et Consignations, regardless of the date of its receipt.

*Amended by Order No. 2009-15 of 8 January 2009 Art. 4 Official Journal of 9 January 2009*

## Paragraph 2 Interest on deposits and consignments

Article L. 518-23. - The rate and the calculation method applied to the interest on deposit accounts opened with the Caisse des Dépôts et Consignations and to the sums deposited with said Caisse shall be determined by a decision of the director general taken after consultation with the Supervisory Commission and with the approval of the Minister for the Economy.

## Paragraph 3 Rules of forfeiture

Article L. 518-24. - Sums deposited with the Caisse des Dépôts et Consignations, for whatever reason, shall become the property of the State when a period of thirty years has elapsed without any payment or repayment taking place in the account in which said sums are deposited, or without any application for payment being made to the Caisse as provided for in Article 15 of the order of 3 July 1816, or any act referred to in Articles 2241 and 2244 of the Civil Code.

Six months, at the latest, before expiry of said period, the Caisse des Dépôts et Consignations shall notify the known parties concerned by registered letter of the forfeiture they shall incur. Said notification shall be sent to the domicile indicated in the deeds and documents in the possession of the CDC, or, where there is no known domicile, to the Public Prosecutor of the place where the deposit was made.

Furthermore, the date and place of depositing, and the surnames, forenames and addresses of the parties concerned who have not made an application for payment within two months of said notification, shall be published immediately in the Official Journal.

The forfeited sums shall be paid to the Trésor public annually, together with the interest accrued thereon.

Under no circumstances shall the Caisse des Dépôts et Consignations be required to pay more than thirty years' interest, unless a notice of claim recognised as valid was filed against the CDC before thirty years had elapsed.

The above provisions shall apply to the financial securities deposited, for whatever reason, with the Caisse des Dépôts et Consignations.

*Amended by Act No. 2008-561 of 17 June 2008 Official Journal of 18 June 2008*

*Amended by Order No. 2009-15 of 8 January 2009 Art. 4 Official Journal of 9 January 2009*

## Section 3 La Poste

Article L. 518-25. - In the fields of banking, finance and insurance, La Poste makes products and services available to the great majority, inter alia the Livret A account (passbook account).

To this end, and without prejudice, where applicable, to the activities it engages in directly pursuant to the laws that govern it, La Poste may, as provided for in the applicable legislation, create any subsidiary having the status of credit institution, investment firm, payment institution or insurance company and directly or indirectly hold any equity interest in such institutions, firms or companies. It may enter into any agreement with such institutions, firms or companies with a view to offering any service conducive to the achievement of their object, in their name and on their behalf, and in compliance with rules on competition, inter alia any service relating to the transactions referred to in Articles L. 314-1 and Articles L. 321-1, L. 321-2 and L. 522-2 or any insurance product.

*Amended by Act No. 2005-516 of 20 May 2005 relating to the regulation of postal activities Art. 16 I 2a Official Journal of 21 May 2005*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 9 Official Journal of 16 July 2009*

Article L. 518-25-1. - I. - A credit institution in which La Poste has a majority shareholding receives the Livret A deposits as provided for in section 1 of Chapter I of Part II of Book II.

II. - The State and said credit institution have entered into an agreement which sets forth the terms and conditions applicable to said institution for the distribution and operation of the Livret A accounts.

III. — La Poste and said credit institution have entered into an agreement under the conditions set forth in Article L. 518-25 which sets forth the conditions under which any depositor holding a Livret A opened with said institution may make payments and withdrawals in the post offices duly organised for said purpose.

*Inserted by Act No. 2008-776 of 4 August 2008 Art. 145 Official Journal of 5 August 2008*

*(Section 4 The Caisse nationale d'épargne – Section repealed by Act No. 2008-776 of 4 August 2008 Art. 146 Official Journal of 5 August 2008 Art. L. 518-26 to 28 repealed)*

## Section 5 Non-profit organisations authorised to grant certain loans

*Inserted by Act No. 2006-387 of 31 March 2006 Art. 26 Official Journal of 1 April 2006*

## Chapter IX Banking transaction and payment service intermediaries

*Part amended by Act No. 2010-1249 of 23 October 2010 Art. 36 Official Journal of 23 October 2010*

## Section 1 Definitions and obligation to register

*Section inserted by Act No. 2010-1249 of 23 October 2010 Art. 36 Official Journal of 23 October 2010*



**Article L. 519-1. – I. – Intermediation in banking transactions and in payment services** is the activity which consists of presenting, proposing or assisting the execution of banking transactions or payment services or carrying out any work and consultancy prior to their execution.

Any individual or legal entity who/which, on a regular basis and in return for payment or for any other form of economic advantage, engages in intermediation in banking transactions and in payment services without being a *del credere* agent is an intermediary in banking services and in payment services.

**II. –** The second paragraph of I above shall not apply to credit institutions, payment institutions, salaried employees of a credit institution or of a payment institution, or to credit institutions, payment institutions and salaried employees of a credit institution or of a payment institution acting under freedom to provide services, or to individuals or legal entities who/which, in carrying on a business as an intermediary in banking transactions and in payment services, meet the conditions set forth in a decree issued following consultation with the Conseil d'Etat, or to the salaried employees of entities acting as an intermediary in banking transactions and in payment services. The conditions set forth in said decree concern, *inter alia*, the business of the intermediary and the nature of the credit and payment service agreement.

**III. –** A decree issued following consultation with the Conseil d'Etat sets forth the implementing provisions of this chapter and determines the categories of individuals and legal entities who/which are authorised to carry on a business as an intermediary in banking transactions and in payment services.

It distinguishes said individuals and legal entities, *inter alia*, according to the type of orders by virtue of which they act and, in particular, according to whether they are under a contractual obligation to work exclusively for one credit institution or one payment institution and on whether they are able to base their activities on an objective analysis of the market.

*Amended by Order No. 2009-866 of 15 July 2009 Art. 9 Official Journal of 16 July 2009*

*Replaced by Act No. 2010-1249 of 23 October 2010 Art. 36 Official Journal of 23 October 2010*

Article L. 519-2. - The business of an intermediary in banking transactions and in payment services may be carried on only between two entities, at least one of whom must be a credit institution or a payment institution.

An intermediary in banking transactions and in payment services acts by virtue of an order issued by one or more institutions referred to in the first paragraph. However, by way of exception and under conditions determined in a decree issued following consultation with the Conseil d'Etat, an intermediary in banking transactions and in payment services may act by virtue of an order issued by another intermediary in banking transactions and in payment services or by the client. The order by virtue of which an intermediary in banking transactions and in payment services acts must refer to the nature and the conditions of the transactions it is authorised to carry out.

*Amended by Order No. 2009-866 of 15 July 2009 Art. 9 Official Journal of 16 July 2009*

*Amended by Act No. 2010-1249 of 23 October 2010 Art. 36 Official Journal of 23 October 2010*

Article L. 519-3. - The provisions of this chapter shall not apply to notaries, who shall remain subject to the laws and regulations specific to them.

*Amended by Act No. 2010-1249 of 23 October 2010 Art. 36 Official Journal of 23 October 2010*

Article L. 519-3-1. – The intermediaries in banking transactions and in payment services described in Article L. 519-1 shall be entered in the sole register referred to in Article L. 546-1.

*Inserted by Act No. 2010-1249 of 23 October 2010 Art. 36 Official Journal of 23 October 2010*

Article L. 519-3-2. – Credit institutions, payment institutions and intermediaries in banking transactions and in payment services who enlist the services of intermediaries in banking transactions and in payment services must ensure that said intermediaries are registered in accordance with Article L. 519-3-1.

*Inserted by Act No. 2010-1249 of 23 October 2010 Art. 36 Official Journal of 23 October 2010*

## Section 2 Other conditions of access and of practice

*Section inserted by Act No. 2010-1249 of 23 October 2010 Art. 36 Official Journal of 23 October 2010*

Article L. 519-3-3. – Individuals who are intermediaries in banking transactions and in payment services acting under their own name, legal entities that run, manage or administer intermediaries in banking transactions and in payment services, and individuals belonging to a supervisory body, who are empowered to sign on their behalf or are directly responsible for the intermediation activity within said intermediaries must meet conditions of respectability and professional competence determined in a decree issued following consultation with the Conseil d'Etat. Said decree shall take account, *inter alia*, of the type of activity carried out by said individuals and legal entities.

*Inserted by Act No. 2010-1249 of 23 October 2010 Art. 36 Official Journal of 23 October 2010*

Article L. 519-3-4. – Where he/it acts on behalf of a credit institution, a payment institution or another intermediary in banking transactions and in payment services, *inter alia* pursuant to an order issued to him/it, the pecuniary consequences of the professional liability of the intermediary in banking transactions and in payment services shall be met by the individual or legal entity on whose behalf he/it is acting or by whom/which he/it was instructed. In other cases, the latter must take out an insurance contract covering the pecuniary consequences of his/its professional liability. Intermediaries must be able to substantiate their position relative to said obligation at all times. A decree issued following consultation with the Conseil d'Etat sets forth the implementing provisions of this Part.

*Inserted by Act No. 2010-1249 of 23 October 2010 Art. 36 Official Journal of 23 October 2010*

Article L. 519-4. - Any intermediary in banking transactions and in payment services who, even if only occasionally, is entrusted with funds as the representative of the parties, must be able, at all times, to show that he has a financial guarantee specifically allocated to the repayment of said funds.

Said guarantee must be in the form of a security undertaking given by a credit institution authorised for said purpose or by an insurance company or a capitalisation firm governed by the Insurance Code.

*Amended by Order No. 2009-866 of 15 July 2009 Art. 9 Official Journal of 16 July 2009*

*Amended by Act No. 2010-1249 of 23 October 2010 Art. 36 Official Journal of 23 October 2010*

### Section 3 Conduct of business rules

*Section inserted by Act No. 2010-1249 of 23 October 2010 Art. 36 Official Journal of 23 October 2010*

Article L. 519-4-1. – Intermediaries in banking transactions and in payment services are required to observe the conduct of business rules determined in a decree issued following consultation with the Conseil d'Etat which is specific to the nature of the business they carry on. Said rules cover, inter alia, obligations to keep their clients properly informed and to protect their interests.

*Inserted by Act No. 2010-1249 of 23 October 2010 Art. 36 Official Journal of 23 October 2010*

Article L. 519-4-2. – Before executing a banking transaction or a payment service, an intermediary referred to in Article L. 519-1 must provide the client with the information concerning, inter alia, its identity, its registration in the sole register referred to in Article L. 546-1 and also, where applicable, to the existence of any financial links with one or more credit institutions or payment institutions.

If it is bound by a contractual obligation to work exclusively with one or more credit institutions or payment institutions, the client must be informed of this and of his right to be informed of the names of said institutions upon request.

*Inserted by Act No. 2010-1249 of 23 October 2010 Art. 36 Official Journal of 23 October 2010*

Article L. 519-5. – Where intermediaries in banking transactions and in payment services engage in a direct marketing activity within the meaning of Articles L. 341-1 and L. 341-2, they shall be subject to the provisions of Articles L. 341-4 to L. 341-17 and L. 353-1 to L. 353-5.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 54 I 1 Official Journal of 2 August 2003*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 9 Official Journal of 16 July 2009*

*Amended by Act No. 2010-1249 of 23 October 2010 Art. 36 Official Journal of 23 October 2010*

"Article L. 519-6. – Any individual or legal entity who/which provides his/its support, for whatever purpose and in whatever manner, directly or indirectly, for the obtaining or the granting of a loan of money, shall be prohibited from receiving any sum by way of an introductory charge, commission, or research fee, prospecting fee, procedural fee, origination fee or payment for any other involvement, before the loaned funds are effectively made available.

He/it shall also be prohibited, pending receipt of the funds and a copy of the deed, from presenting bills of exchange to the borrower for acceptance or from having him/it sign promissory notes as a means of collecting any fee or commission referred to in the previous paragraph.

Violations of the provisions of the first and second paragraphs of this article shall be sought out and recorded as

provided for in Article L. 353-5 and shall be punished with the penalties indicated in Article L. 353-1.]

*Inserted by Order No. 2010-737 of 1 July 2010 Art. 16 Official Journal of 2 July 2010 effective from 1 May 2011*

## PART II PAYMENT SERVICE PROVIDERS AND MONEY CHANGERS

*Part Amended by Order No. 2009-866 of 15 July 2009 Art. 10 Official Journal of 16 July 2009*

### CHAPTER I Payment service providers

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 11 Official Journal of 16 July 2009*

Article L. 521-1. – I. – The payment service providers are the payment institutions and the credit institutions.

II. – Where they provide payment services, the following institutions and units shall also be deemed to be payment service providers, without being subject to the provisions of Chapter II of this Part and within the purview of any laws which govern them:

- a) The Banque de France and the issuing institution of the Overseas *départements*);
- b) The Trésor public;
- c) The Caisse des Dépôts et Consignations.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 11 Official Journal of 16 July 2009*

Article L. 521-2. – It is prohibited for any entity other than those referred to in Article L. 521-1 to provide payment services within the meaning of paragraph II of Article 314-1 in the normal course of their business.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 11 Official Journal of 16 July 2009*

Article L. 521-3. – I. – As an exception to the prohibition in Article L. 521-2, a firm may provide payment services relating to means of payment which are accepted, for the purchase of goods or services, only in said firm's premises or, under a commercial agreement with said firm, within a restricted network of entities accepting said mean of payment or for a limited range of goods or services.

II. – Before commencing its activities, the firm referred to in paragraph I of this article or in paragraph 1 of Article L. 311-4 must send a declaration to the Autorité de Contrôle Prudentiel, unless the payment instruments issued by said firm are provided exclusively for the purchase of a specific item or service from it or from firms linked to it under a commercial franchise agreement.

The Autorité de Contrôle Prudentiel is allocated a period set by the applicable regulations, commencing upon receipt of the declaration or, if said declaration is incomplete, the same period with effect from receipt of all the information required, in which to inform the declarant that the conditions referred to in paragraph I of this article or in paragraph 1 of Article L. 311-4 have not been met. Lack of any response from the Autorité de Contrôle Prudentiel shall signify approval of the aforementioned conditions.

Said firms shall send an annual report substantiating their compliance with the aforementioned provisions to the Autorité de Contrôle Prudentiel.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 11 Official Journal of 16 July 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Article L. 521-4. - Any firm other than those referred to in Article L. 522-1 is prohibited from using a trade name, corporate name, advertising or, more generally, any wording, which might imply that it is an authorised payment institution or could create confusion in that regard.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 11 Official Journal of 16 July 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

## CHAPTER II Payment institutions

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 12 Official Journal of 16 July 2009*

### Section 1 Definition

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 12 Official Journal of 16 July 2009*

Article L. 522-1. – Payment institutions are legal entities other than credit institutions, and other than the entities referred to in paragraph II of Article L. 521-1, which, in the normal course of their business, provide the payment services referred to in L. 314-1.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 12 Official Journal of 16 July 2009*

Article L. 522-2. – I. – In addition to providing the payment services referred to in paragraph II of Article L. 314-1, payment institutions may provide related services such as the exchange services referred to in paragraph I of Article L. 524-1, custody services, and data storage and processing services, as well as guaranteeing the execution of payment transactions and granting the loans referred to in the first paragraph of Article L. 313-1, excluding overdraft and discounting transactions.

Where payment institutions provide the aforementioned exchange services, they must keep a register of the transactions pursuant to paragraph I of Article L. 524-6 and have paid-up capital or a guarantee available pursuant to Article L. 524-3(I, b).

II. – The payment institutions authorised to provide the payment services referred to in Article L. 314-1(II, 4, 5, 7) may, in the context of their activities as a payment service provider, grant loans only where the following conditions are met:

a) Where the loan is of an ancillary nature and must be granted solely in connection with the execution of the payment transactions carried out by said institution;

b) Where the loan must be repaid within a time limit set by the parties which shall not under any circumstances exceed twelve months;

c) Where the loan is not granted on the basis of the funds received or held by the institution for the purpose of executing payment transactions.

The loans granted by the payment institutions are subject to the provisions of the Consumer Code insofar as they are applicable to them.

Under the conditions set forth by order of the Minister for the Economy, the payment institutions must at all times have an

amount of equity capital which is commensurate with the total volume of the outstanding loans.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 12 Official Journal of 16 July 2009*

Article L. 522-3. – Without prejudice to the provisions of paragraph II of Article L. 522-8, payment institutions may, in the normal course of their business, engage in an activity other than the provision of payment services or of related services, subject to compliance with the laws and regulations applicable to said activity.

For said payment institutions engaged in hybrid activities, the activities other than payment services must not be incompatible with the requirements of the profession as regards, inter alia, the upholding of the payment institution's reputation, the prime importance of the clients' interests and the free play of competition on the market concerned.

An order of the Minister for the Economy shall determine the terms and conditions under which the payment institutions may carry on an activity other than the provision of payment services in the normal course of their business.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 12 Official Journal of 16 July 2009*

Article L. 522-4. – I. – The accounts opened by the payment institutions are payment accounts which shall be used solely for payment transactions. Said sole use must be expressly stipulated in the payment services framework agreement which governs the account.

Any investment of said funds in a savings or investment product on the client's behalf, even temporary, is prohibited.

II. – The funds belonging to users of payment services collected by payment institutions for the provision of payment services shall not constitute funds received from the public within the meaning of Article L. 312-2 or funds representing electronic currency.

Consequently, the payment institution cannot use said funds for its account.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 12 Official Journal of 16 July 2009*

Article L. 522-5. – Each payment institution is required to belong to a professional body affiliated with the Association Française des Établissements de Crédit et des Entreprises d'Investissement referred to in Article L. 511-29.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 12 Official Journal of 16 July 2009*

Article L. 522-5-1. – The institutions referred to in this chapter shall indicate in their annual report the amount and particulars of the loans they finance or distribute that come within the definition given in paragraph III of Article 80 of Act No. 2005-32 of 18 January 2005 relating to social cohesion and therefore have the benefit of public guarantees.

*Inserted by Order No. 2010-737 of 1 July 2010 Art. 24 Official Journal of 2 July 2010 pursuant to rules determined by decree*

## Section 2 Conditions of admission to the profession

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 12 Official Journal of 16 July 2009*

### Subsection 1 Approval

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 12 Official Journal of 16 July 2009*

Article L. 522-6. – I. – Before providing any payment services, the payment institutions must obtain an approval granted by the Autorité de Contrôle Prudentiel after consultation with the Banque de France as provided for in the third paragraph of Article L. 141-4. Said approval may be granted only to a legal entity.

II. – Prior to granting approval to a payment institution, the Autorité de Contrôle Prudentiel shall ensure that, given the need to guarantee sound and prudent management of the payment institution, said institution has in place for the provision of its payment services activity:

a) A sound system of corporate governance comprising, inter alia, a clear organisational structure with a well defined, transparent and coherent sharing of responsibilities;

b) Efficient procedures for detecting, managing, monitoring and declaring the risks to which it is, or may be, exposed and an adequate internal auditing system, including sound administrative and accounting procedures;

Said system and said procedures shall be proportionate to the nature and complexity of the payment services provided by the payment institution.

The Autorité de Contrôle Prudentiel shall also confirm that:

a) The payment institution meets the conditions of Article L. 522-7 and of paragraph I of Article L. 522-8;

b) The individuals declared responsible for the effective management of the payment institution and, in the cases where payment institutions are engaged in hybrid activities, the individual declared responsible for the management of the payment institution's payment service activities, possess the respectability, competence and experience required to ensure the payment institution's sound and prudent management;

c) The performance of the applicant firm's auditing function is unlikely to be impeded either by the existence of ownership links or of direct or indirect control between the firm and other individuals or legal entities, or by the existence of laws or regulations of a State which is not party to the European Economic Area Agreement which one or more of said individuals or legal entities is/are governed by.

In order to guarantee sound and prudent management of the payment institution, the Autorité de Contrôle Prudentiel shall also assess the status of the shareholders or partners who have a qualified equity holding.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 12 Official Journal of 16 July 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

*Amended by Order No. 2010-737 of 1 July 2010 Art. 38 Official Journal of 2 July 2010*

Article L. 522-7. – Upon approval, the payment institutions must have paid-up capital of an amount at least equal to the sum determined by the applicable regulations, depending on whether:

a) The payment institution provides only the funds transmission payment service;

b) The payment institution provides a payment transaction execution service in which the payer's consent to a payment transaction is given via any telecommunications, digital or IT device and the payment is sent to the operator of the system or of the telecommunications or IT network acting solely as an intermediary between the user of the payment service and the provider of goods or services;

c) The payment institution provides other payment services.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 12 Official Journal of 16 July 2009*

Article L. 522-8. – I. – The central body of any payment institution must be located on the same domestic territory as its registered office.

II. – Where a payment institution engages in hybrid activities within the meaning of Article L. 522-3, the Autorité de Contrôle Prudentiel may require that a distinct legal entity be created for the payment service activities where the payment institution's other activities affect, or may affect, the payment institution's financial health or the quality of the supervision carried out relative to the payment institution's compliance with the obligations imposed on it.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 12 Official Journal of 16 July 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Article L. 522-9. – The Autorité de Contrôle Prudentiel shall inform the applicant of its decision within a time limit set by the applicable regulations following receipt of the application or, if the application is incomplete, the same time limit with effect from receipt of all the information required.

The Autorité de Contrôle Prudentiel shall draw up and regularly update a list of the payment institutions, which shall be published in the Official Journal of the French Republic.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 12 Official Journal of 16 July 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Article L. 522-10. The payment institution must meet the conditions of its approval at all times.

Any change to the conditions attached to the approval granted to a payment institution which affects the accuracy of the information and supporting documents provided for implementation of the provisions of paragraph II of Article L. 522-6 must be the subject of a declaration made to the Autorité de Contrôle Prudentiel. An order of the Minister for the Economy stipulates the terms of said declaration and the consequences it may give rise to.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 12 Official Journal of 16 July 2009*

Article L. 522-11. – I. – The withdrawal of a payment institution's approval shall be pronounced by the Autorité de Contrôle Prudentiel at the request of the institution.

It may also be decided without consultation by the Autorité de Contrôle Prudentiel where the institution:

a) Does not make use of the approval within twelve months or has ceased conducting its business for a period of more than six months;

b) Obtained approval by making false declarations or by any other improper means;

c) No longer meets the conditions attached to its approval or to a subsequent authorisation.



II - Withdrawal of authorisation shall take effect upon expiry of a period determined by the Autorité de Contrôle Prudentiel.

During said period:

1 The payment institution shall remain subject to the supervision of the Autorité de Contrôle Prudentiel. The Autorité de Contrôle Prudentiel may impose on it the disciplinary sanctions referred to in Article L. 612-39, including delisting;

2 The institution may provide only the payment services and the guarantees of execution of payment transactions or the credit transactions which are strictly necessary to settle its position;

3. It may refer to its payment institution status only to state that its authorisation is in the process of being withdrawn.

III. – In the case envisaged in paragraph I, the funds of payment service users received by a payment institution shall be returned to the users or transferred to a credit institution or to another authorised payment institution or to the Caisse des Dépôts et Consignations.

Upon expiry of the period referred to in paragraph II, the firm shall lose its credit-institution status and must have changed its corporate name. Any payment transactions which the institution entered into or undertook to enter into before the decision to withdraw approval was taken may be concluded in the usual way.

As an exception to the provisions of 4 and 5 of Article 1844-7 of the Civil Code, the early dissolution of a payment institution cannot be pronounced until its approval has been withdrawn by the Autorité de Contrôle Prudentiel. As an exception to Articles L. 123-1 and L. 237-3 of the Commercial Code, the publication and the amending entry in the Trade and Companies Register concerning the pronouncement of such dissolution must indicate the date of the Autorité de Contrôle Prudentiel's decision to withdraw authorisation. Until the close of the liquidation proceedings, the institution shall remain subject to the Autorité de Contrôle Prudentiel's supervision, which may impose all sanctions referred to in Article L. 613-21 of this code. It shall not refer to its credit-institution status without indicating that it is in liquidation.

The Autorité de Contrôle Prudentiel may order the deletion of a payment institution from the list of approved payment institutions as a disciplinary measure.

For a payment institution engaged in hybrid activities within the meaning of Article L. 522-3, delisting entails a prohibition on the institution engaging in the activities in respect of which approval as a payment institution was granted to it.

For other institutions, delisting entails the liquidation of the legal entity.

Any institution which has been the subject of such a disciplinary sanction shall remain subject to the supervision of the Autorité de Contrôle Prudentiel until either the cessation of all payment activities or the conclusion of the liquidation. Until then, it may carry out only the transactions which are strictly necessary to settle its affairs. It shall not refer to its payment-institution status without stating that it is the subject of a delisting procedure.

V. – An order of the Minister for the Economy sets forth the implementing provisions of Article L. 522-11. It determines, inter alia, the manner in which decisions to withdraw authorisation or to delist shall be made known to the public.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 12 Official Journal of 16 July 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 5 Official Journal of 22 January 2010*

## Subsection 2 Freedom of establishment and freedom to provide services in the States party to the European Economic Area Agreement

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 12 Official Journal of 16 July 2009*

Article L. 522-12. - In this subsection and for the purposes of the provisions relating to freedom of establishment and freedom to provide services:

1 The term “competent authorities” shall mean the authority or authorities in a member State or in another State party to the European Economic Area Agreement responsible, pursuant to the legislation of said State, for approving or supervising the payment institutions having their registered office or their central body there;

2 The term “home State” shall mean, for a payment institution, the Member State or another State party to the European Economic Area Agreement where it has its registered office or, if, pursuant to its domestic law, it does not have one, the Member State or another State party to the European Economic Area Agreement in which its central body is located;

3 The term “host State” shall mean any Member State or any other State party to the European Economic Area Agreement in which the payment institution conducts its business through a branch or an agent or under freedom to provide services;

4. The term “branch” shall mean one or more elements, lacking legal personality, of a payment institution, whose purpose is to provide investment services. All the operational sites established in the same Member State or in the same other State party to the European Economic Area Agreement by a payment institution having its registered office in another Member State or another State party to the European Economic Area Agreement, as applicable, shall be deemed to constitute a single branch.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 12 Official Journal of 16 July 2009*

Article L. 522-13. – I. – 1 Any payment institution having its registered office in Metropolitan France, the overseas *départements*, Saint Martin or Saint Barthélemy that wishes to open a branch or use an agent in another Member State of the European Community or another State party to the European Economic Area Agreement shall notify the Autorité de Contrôle Prudentiel of its intention. Said notification shall be accompanied by information as stipulated by order of the Minister for the Economy.

Within a time limit, set by the applicable regulations, after receipt of said information, the Autorité de Contrôle Prudentiel shall inform the competent authorities of the host Member State of the information referred to in the previous paragraph. Without prejudice to the provisions of paragraph 2, and where the formalities determined by order of the Minister for the Economy are complied with, the Autorité de Contrôle Prudentiel shall add the branch to the list referred to in Article L. 612-21 or shall register the agent pursuant to the provisions of Article L. 523-1;

2 If the competent authorities of the host Member State have good reasons for suspecting that a money laundering or terrorist financing operation, or attempt, is in progress or has taken place in tandem with the plan to open a branch or to use an agent, or that the opening of said branch or the use of said agent could increase the risk of money laundering or of terrorist financing, they shall duly inform the Autorité de Contrôle Prudentiel, which may refuse to add the branch to the list referred to in Article L. 612-21 or to register the agent pursuant to the provisions of Article L. 523-1;

3 Any payment institution having its registered office in Metropolitan France, the overseas *départements*, Saint Martin or Saint Barthélemy, which wishes to conduct business in another

Member State of the European Community or another State party to the European Economic Area Agreement under freedom to provide services shall inform the Autorité de Contrôle Prudentiel of its intention. Said notification shall be accompanied by information as stipulated by order of the Minister for the Economy.

II. – Within the compass of the payment services it is authorised to provide in a Member State of the European Community or a State party to the European Economic Area Agreement other than France, and in accordance with the approval it has received there, any payment institution may, in Metropolitan France, the overseas *départements*, Saint Martin or Saint Barthélemy, open a branch or use an agent, subject to the Autorité de Contrôle Prudentiel having been informed thereof by the competent authority of the home Member State as provided for by order of the Minister for the Economy;

2 If the Autorité de Contrôle Prudentiel has good reasons for suspecting that a money laundering or terrorist financing operation, or attempt, is in progress or has taken place in tandem with the plan to use an agent or to open a branch, or that the use of said agent or the opening of said branch could increase the risk of money laundering or of terrorist financing, it shall inform the competent authorities of the home Member State thereof;

3 Within the compass of the payment services it is authorised to provide in a Member State of the European Community or a State party to the European Economic Area Agreement other than France, and in accordance with the approval it has received there, any payment institution may, in Metropolitan France, the overseas *départements*, Saint Martin or Saint Barthélemy, open a branch or use an agent, subject to the Autorité de Contrôle Prudentiel having been informed thereof by the competent authority of the home Member State as provided for by order of the Minister for the Economy.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 12 Official Journal of 16 July 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 5 Official Journal of 22 January 2010*

*Amended by Order No. 2010-737 of 1 July 2010 Art. 38 Official Journal of 2 July 2010*

### Section 3 Prudential provisions

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 12 Official Journal of 16 July 2009*

Article L. 522-14. – Payment institutions are required to meet the management standards intended to ensure their solvency and the stability of their financial structure. They must also have a suitable internal auditing system to enable them, inter alia, to assess the risks and profitability of their activities, including any essential or important duties or other operational tasks entrusted to third parties.

They must maintain an adequate level of equity capital.

The implementing provisions of this article and, in particular, the formula for calculating the equity capital requirements are determined by the applicable regulations.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 12 Official Journal of 16 July 2009*

Article L. 522-15. – A payment institution's equity capital cannot be below any of the requirements set forth in Article L. 522-7 and in the second paragraph of Article L. 522-14.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 12 Official Journal of 16 July 2009*

Article L. 522-15-1. – The Autorité de Contrôle Prudentiel may send the payment institutions a recommendation or an order

requiring them to ensure that they have sufficient equity capital for the payment services, inter alia where the payment institution's activities other than payment services undermine or threaten to undermine the financial health of the payment institution.

The Autorité de Contrôle Prudentiel may also send the payment institutions engaged in hybrid activities within the meaning of Article L. 522-3 a recommendation or an order requiring them to create a distinct legal entity for the payment service activities where the institution's activities other than payment services undermine or threaten to undermine the financial health of the payment institution or the Autorité de Contrôle Prudentiel's ability to determine whether the institution is meeting all the obligations imposed on it.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 5 Official Journal of 22 January 2010*

Article L. 522-16. – Any payment institution which intends to outsource operational functions for payment services shall inform the Autorité de Contrôle Prudentiel thereof.

The outsourcing of important operational functions cannot take place in a manner which seriously prejudices the quality of the payment institution's internal auditing and which prevents the Autorité de Contrôle Prudentiel from determining whether said institution is meeting all of its obligations.

An order of the Minister for the Economy determines the implementing provisions of this article.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 12 Official Journal of 16 July 2009*

Article L. 522-17. – I. – The funds received either from payment service users or via another payment service provider for the execution of payment transactions shall be protected using one of the following two methods, at the payment institution's discretion:

1 The funds received shall at all times be kept separate from the funds of individuals or legal entities other than the payment service users on behalf of whom the funds are held.

The funds remaining in the payment service user's account at the close of the business day following the day on which they were received, as defined in Article L. 133-4(d), shall be deposited in a separate account with a credit institution authorised to receive on-demand deposits from the public.

They may also be invested in financial instruments kept in accounts opened specifically for that purpose with an entity referred to in Article L. 542-1(2, 3, 4, 5), in the manner determined by order of the Minister for the Economy.

Said funds shall be protected as provided for in Article L. 613-30-1 against any action by other creditors of the payment institution, including enforcement proceedings or insolvency proceedings brought against the institution;

2 The funds received are covered by an insurance contract or another comparable guarantee from an insurance company or a credit institution which does not belong to the same group, as provided for by order of the Minister for the Economy, which insures or guarantees payment service users in the event of the payment institution defaulting in the performance of its financial obligations.

II. – Where the funds remitted may be used on the one hand to execute futures payment transactions and on the other hand for services other than payment services, the portion of the funds received for execution of the futures payment transactions shall be protected in accordance with the terms and conditions laid down in this article. If said portion is variable or cannot be determined in advance, the payment institutions shall carry out an evaluation of the representative portion of the funds received for the execution of payment transactions, applying the conditions set forth by order of the Minister for the Economy. The

representative portion thus determined shall be protected as provided for in paragraph I.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 12 Official Journal of 16 July 2009*

Article L. 522-18. – The payment institutions shall provide their clients, and likewise anyone who so requests, with any relevant information on the arrangements for protecting the funds collected. The clients shall be informed of any changes. The use of said information for advertising purposes is prohibited.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 12 Official Journal of 16 July 2009*

## Section 4 Professional secrecy, accounting and statutory auditing of the accounts

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 11 Official Journal of 16 July 2009*

Article L. 522-19. – I. – Any member of a Board of Directors and, where applicable, of a Supervisory Board, and any individual who, in whatever capacity, participates in the administration or the management of a payment institution or who is employed by a payment institution shall be bound by professional secrecy.

In addition to the cases envisaged by the law, professional secrecy cannot be raised against the Autorité de Contrôle Prudentiel, the Banque de France or a court acting within the scope of criminal proceedings.

II. – The provisions of Articles L. 232-1 and L. 232-6 of the Commercial Code shall apply to all the payment institutions as determined by the Autorité des Normes Comptables following consultation with the Comité Consultatif de la Législation et de la Réglementation Financières.

III. – Where payment institutions draw up consolidated accounts, they shall do so pursuant to the rules set forth in a regulation of the Autorité des Normes Comptables following consultation with the Comité Consultatif de la Législation et de la Réglementation Financières. They shall be exempted from compliance with said rules, however, if they use the international accounting standards approved by a regulation of the European Commission.

IV. – Each payment institution must publish its annual accounts in the manner stipulated by the Autorité des Normes Comptables following consultation with the Comité Consultatif de la Législation et de la Réglementation Financières.

The Autorité de Contrôle Prudentiel shall ensure that publication as provided for above is properly carried out. It may order a payment institution to provide corrected publications if inaccuracies or omissions are found in the published documents.

It may draw the public's attention to any information it considers necessary.

V. – The payment institutions are bound by the obligations of Articles L. 511-38 and L. 511-39. Where they engage in other activities pursuant to Article L. 522-3, however, the Autorité de Contrôle Prudentiel's opinion shall not be required for the appointment of their statutory auditors.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 12 Official Journal of 16 July 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Article L. 522-20. – Where they engage in other activities pursuant to Article L. 522-3, the payment institutions shall draw

up separate accounting information relating to the payment service activities referred to in paragraph II of Article L. 314-1 and to the related activities referred to in Article L. 522-2, in accordance with the rules set forth in a regulation of the Autorité des Normes Comptables adopted following consultation with the Comité Consultatif de la Législation et de la Réglementation Financières.

The accounting information referred to in the first paragraph shall be the subject of an audit report drawn up by their statutory auditors as provided for in the applicable regulations.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 12 Official Journal of 16 July 2009*

## CHAPTER III Agents

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 13 Official Journal of 16 July 2009*

Article L. 523-1. – I. – The payment service providers may enlist the services of one or more agents to carry out the payment service activities on their behalf, within the scope of their approval.

The agents may promote the services provided by the payment service providers and may be authorised to canvass clients on their behalf as provided for in Chapter I of Part IV of Book III of this code.

Each agent acts by virtue of a power given by a payment service provider. Agents are required to inform the users of their status as agents when they make contact with them. An agent may be empowered by several payment service providers.

II. – The payment service providers have the agents they intend to use registered with the Autorité de Contrôle Prudentiel. To that end, they send the Autorité de Contrôle Prudentiel the information it needs in order to verify that said agents meet the conditions set forth in this chapter. A payment service provider may have another payment service provider send the information required to register the agents.

Where an agent no longer meets the conditions of registration, it is incumbent on the payment service provider to duly inform the authority with which the agent was registered.

III. – The Autorité de Contrôle Prudentiel may refuse to register an agent if, after verification, it does not consider the information provided to be satisfactory.

IV. – The implementing provisions of this article are set forth in an order of the Minister for the Economy.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 13 Official Journal of 16 July 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Article L. 523-2. – Individuals who act as an agent or as a manager, or who manage an agent, or to whom responsibility as an agent is delegated, shall be subject to the incapacities referred to in Article L. 500-1.

No one may engage in an activity or perform the duties referred to in the previous paragraph if he has been the subject, within the previous five years:

a) Of a temporary or permanent ban on carrying out an activity or providing a service, pursuant to Article L. 621-15;

b) Of a temporary or permanent ban on carrying out certain transactions or of a restriction on carrying out an activity, pursuant to Article L. 612-39(I, 3);

c) Of a delisting pronounced pursuant to Article L. 612-39(I, 7), in the case of a payment institution engaged in a hybrid activity within the meaning of Article L. 522-3;

d) Of a withdrawal of the authorisation to practice the profession of money changer, pursuant to Article L. 612-41(II, 3);  
 e) Of a sanction referred to in Article L. 612-39(4 or 5);  
 f) Of a ban on practicing the profession of money changer, pursuant to the first sentence of the sixth paragraph of paragraph II of Article L. 612-41;

g) Of a sanction pursuant to Article L. 612-41(I, 3, 4, 5);

h) Of an equivalent sanction imposed by the authorities having responsibility for the supervision of payment institutions in another State party to the European Economic Area Agreement.

The individuals engaged in the activity, or performing the duties, referred to in the first paragraph must possess the requisite respectability and competence as stipulated in an order of the Minister for the Economy.

They shall substantiate this as provided for in an order of the Minister for the Economy which also determines the conditions in which the Autorité de Contrôle Prudentiel is exempted from verifying them.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 13 Official Journal of 16 July 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 5 Official Journal of 22 January 2010*

Article L. 523-3. – As principal, the payment service provider retains full liability towards third parties for the acts of any agent it has commissioned.

The payment service provider shall ensure that its agents comply with the laws and regulations applicable to them at all times and shall submit them to its internal auditing system referred to in Article L. 522-14, including its measures to combat money laundering and terrorist financing.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 13 Official Journal of 16 July 2009*

Article L. 523-4. – Where a payment institution having its registered office in Metropolitan France, the overseas *départements*, Saint Martin or Saint Barthélemy or a payment institution approved in another Member State of the European Community or another State party to the European Economic Area Agreement wishes to use an agent to carry out payment service activities in another Member State of the European Community or another State party to the European Economic Area Agreement, as applicable, or in Metropolitan France, the overseas *départements*, Saint Martin or Saint Barthélemy the procedures referred to in Article L. 522-13 shall apply.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 13 Official Journal of 16 July 2009*

Article L. 523-5. – For the purposes of Article L. 511-33, paragraph I of Article L. 522-19, the second paragraph of Article L. 571-4 and Article L. 572-7, agents shall be treated as employees of the payment service providers.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 13 Official Journal of 16 July 2009*

Article L. 523-6. – Without becoming subject to Articles L. 523-1 to L. 523-5, credit institutions may commission any individual already engaged in another occupation for the sole purpose of delivering currency to their clients who have an account of the type referred to in Article L. 314-1 open in their books, against a payment order given via a means of payment associated with the aforementioned account.

The credit institution shall retain full liability towards its clients for the acts of the individual referred to in the first paragraph arising from the activity referred to in said paragraph,

including observance by said individual of the confidentiality of the information known to him on account of said activity.

The individual referred to in the first paragraph shall come within the scope of the commissioning credit institution's internal auditing system.

Where there is no separate fund maintained by the credit institution to cover execution of the transactions referred to in the first paragraph, the provisions relating to delivery to the counters, by the credit institutions, of banknotes in euros received from the public shall apply.

The activity referred to in paragraph 1 must remain secondary and minor relative to the agent's principal occupation.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 13 Official Journal of 16 July 2009*

## Chapter IV Money changers

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 10 Official Journal of 16 July 2009*

Article L. 524-1. - I. – A money-changing transaction entails the immediate exchange of bills or banknotes denominated in different currencies. The fact of accepting, in exchange for cash delivered to a client, a settlement via another means of payment, also constitutes a money-changing transaction, provided that it is denominated in a different currency.

II. – Money changers are individuals or legal entities, other than credit institutions, payment institutions and the institutions and services referred to in L. 518-1 who/which carry out money-changing transactions in the normal course of their business.

However, the fact of carrying out money-changing transactions on an occasional basis or for limited amounts under conditions set laid down decree does not constitute practice of the profession of money changer.

*Replaced by the order No. 2009-104 of 31 January 2009 Art. 1 Official Journal of 31 January 2009*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 10 Official Journal of 16 July 2009 formerly Article L. 520-1*

Article L. 524-2. As an exception to the prohibition imposed by Article L. 511-5, money changers may hand over euros in cash in return for travellers cheques denominated in euros.

II. – Individuals or legal entities engaged in the money-changing profession on an occasional basis or for limited amounts as provided for in the last paragraph of Article L. 524-1 shall be required to send the Autorité de Contrôle Prudentiel a declaration through which they certify that they meet said conditions. The particulars and the frequency of said declaration are determined in an order of the Minister for the Economy.

*Replaced by the order No. 2009-104 of 31 January 2009 Art. 1 Official Journal of 30 January 2009*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 10 Official Journal of 16 July 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Article L. 524-3. - I. – Before commencing their activity, money changers must obtain an authorisation from the Autorité de Contrôle Prudentiel, which shall verify whether the institution:

a) Is recorded in the trade and companies register;

b) Can show that it has paid-up capital, or a guarantee from a credit institution or from an insurance company, of an amount at least equal to a sum determined in an order of the Minister for the Economy.



c) Can show that its senior managers and its effective beneficiaries possess the requisite respectability and competence as specified by decree and under conditions determined in an order of the Minister for the Economy.

II. — Any change affecting a money changer's compliance with the obligations referred to in paragraph I shall require, as applicable, prior authorisation from the Autorité de Contrôle Prudentiel, a declaration or a notification, as provided for in an order of the Minister for the Economy.

III. — The Autorité de Contrôle Prudentiel may withdraw a money changer's authorisation, either at the institution's request or without consultation, where the money changer has not made use of said authorisation within twelve months or has not traded for at least six months.

IV. — The Autorité de Contrôle Prudentiel shall publish a list of the money changers pursuant to rules determined by order of the Minister for the Economy.

*Replaced by the order No. 2009-104 of 31 January 2009 Art. 1 Official Journal of 31 January 2009*

*Numbering changed by Order No. 2009-866 of 15 July 2009 Art. 10 Official Journal of 16 July 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Article L. 524-4. - The practice of the money changer's profession is prohibited for any individual or legal entity who/which has not received prior authorisation from the Autorité de Contrôle Prudentiel.

The carrying out of money changing activities or the de facto and de jure management of an institution engaged in such an activity is prohibited for any individual who has been the subject of the sanction referred to in Article L. 612-41(II, 3).

Individuals carrying out said activities shall be subject to the incapacities set forth in Article L. 500-1.

*Replaced by the order No. 2009-104 of 31 January 2009 Art. 1 Official Journal of 31 January 2009*

*Numbering changed by Order No. 2009-866 of 15 July 2009 Art. 10 Official Journal of 16 July 2009*

*Amended by Act No. 2009-888 of 22 July 2009 Art. 9 Official Journal of 24 July 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 5 Official Journal of 22 January 2010*

Article L. 524-5. - Any institution other than an authorised money changer is prohibited from using a trade name, a corporate name, advertising or any other process which might imply that it is an authorised money changer or could create confusion in that regard.

*Inserted by the order No. 2009-104 of 31 January 2009 Art. 1 Official Journal of 31 January 2009*

*Numbering changed by Order No. 2009-866 of 15 July 2009 Art. 10 Official Journal of 16 July 2009*

Article L. 524-6. - I. — Money changers are required to be able to show at all times that they comply with the conditions set forth in Article L. 524-3 and with all the provisions that they are subject to, inter alia those of Part VI which apply to them.

Money changers shall keep a register of their transactions.

The Minister for the Economy may, by order, make them subject to specific terms and conditions relating to their obligations laid down in Part VI and in this Part, as well as rules of execution for money-changing transactions, organisation and internal auditing that are devised to ensure fulfilment thereof.

II. — The Autorité de Contrôle Prudentiel exercises disciplinary powers over the money changers as provided for in

paragraph II of Article L. 612-41.

The Autorité de Contrôle Prudentiel carries out supervision of the money changers, including on-the-spot inspections, under the conditions set forth in Articles L. 612-17 and L. 612-23 to L. 612-27. The agents responsible for carrying out the on-the-spot inspections may inspect the till.

Customs officers having the rank of controller, at least, may also carry out on-the-spot inspections of the money-changers on behalf of the Autorité de Contrôle Prudentiel, as provided for in Article L. 524-7.

Notwithstanding any legislative provision to the contrary, the Autorité de Contrôle Prudentiel and the customs administration may exchange the information required for the purposes of this Part and of Part VI of this Book.

*Inserted by the order No. 2009-104 of 31 January 2009 Art. 1 Official Journal of 31 January 2009*

*Numbering changed by Order No. 2009-866 of 15 July 2009 Art. 10 Official Journal of 16 July 2009*

*Amended by Act No. 2009-888 of 22 July 2009 Art. 9 Official Journal of 24 July 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 5 Official Journal of 22 January 2010*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 12 Official Journal of 23 October 2010*

Article L. 524-7. I- Customs officers having the rank of controller, at least, are authorised to detect and establish breaches of the rules applicable to money-changers, as set forth in this Part and in Part VI of this Book, or their implementing provisions.

II- To that end, the customs officers referred to in paragraph I shall have access to the business premises of the money-changers during their normal business hours, excluding any parts of said premises used as private living accommodation.

They may request sight of the registers and the business documents that the money changers are required to draw up pursuant to this Part and to Article L. 561-12.

They may arrange to have copies of the aforementioned documents delivered to them.

They may inspect the till.

They may collect information and elements of proof on the spot or arrange an investigative session for said purpose. The sessions that money changers are summoned to attend pursuant to the foregoing provisions shall be the subject of written reports.

III. - Where the provisions of paragraph II above are applied with a view to detecting and establishing the criminal offences indicated in Article L. 572-1, the Public Prosecutor shall be informed of the planned operations in advance. He may raise an objection within a time limit set by the applicable regulations.

IV. - Upon completion of the inspection, the customs officers shall draw up a report.

A list of the documents of which a copy was provided shall be appended thereto.

The report shall be signed by the customs officers who carried out the inspection and by the money changer or, where it is a legal entity, its representative. The party concerned shall have a period of thirty days in which to make any observations thereon. They shall be appended to the file. In the event of refusal to sign, this shall be noted in the report. A copy of the report shall be handed to the party concerned.

V. — The report, the minutes of the investigative session and the money changer's observations shall be sent to the Autorité de Contrôle Prudentiel as soon as possible.

*Inserted by the order No. 2009-104 of 31 January 2009 Art. 1 Official Journal of 31 January 2009- formerly Article L.520-7-*

*Numbering changed by Order No. 2009-866 of 15 July 2009 Art. 10 Official Journal of 16 July 2009*

*Amended by Act No. 2009-888 of 22 July 2009 Art. 9 Official Journal of 24 July 2009*

## PART III INVESTMENT SERVICE PROVIDERS

### Chapter I Definitions

#### Section 1: General provisions

Article L. 531-1. - The investment service providers are the investment firms and credit institutions which have been authorised to provide investment services within the meaning of Article L. 321-1.

The provision of related services within the meaning of Article L. 321-2 is unrestricted, consistent with the laws and regulations in force applicable to each such service. It does not, of itself, suffice to confer investment firm status.

Article L. 531-2. - The following may provide investment services as provided for in the laws, if any, which govern them, without being subject to the authorisation procedure referred to in Article L. 532-1 and without being entitled to claim the benefit of the provisions of Articles L. 532-16 to L. 532-27:

1 a) The State, the Public Debt Fund (Caisse de la Dette Publique, CDP) and the Social Security Debt Amortisation Fund (Caisse d'Amortissement de la Dette Sociale, CADES);

b) The Banque de France;

c) The issuing Institution of the Overseas *départements* and the overseas issuing Institution;

2 a) Insurance and reinsurance companies governed by the Insurance Code;

b) The collective investment undertakings referred to in L. 214-1, as well as the companies responsible for the management of the collective investment undertakings referred to in 2, 3 and 4 of paragraph I of Article L. 214-1;

c) The occupational pension institutions referred to in Article L. 370-1 of the Insurance Code for their transactions referred to in Article L. 370-2 of said code, as well as the legal entities administering an occupational pension institution referred to in Article 8 of Order No. 2006-344 of 23 March 2006 relating to supplemental occupational pensions;

d) Entities that provide investment services only to the legal entities that control them, those controlled by the latter entities and those that they control themselves. For the purposes of this subparagraph d, the notion of control shall mean direct or indirect control within the meaning of Article L. 233-3 of the Commercial Code;

e) Firms whose investment service activities are limited to the management of an employee savings scheme;

f) Firms whose activities are limited to those referred to in subparagraphs d and e above;

g) Entities which provide investment consultancy services or which receive and transmit orders on behalf of third parties, as an adjunct to another, non-financial, business activity or a statutory accounting activity, insofar as said activity is governed by laws or regulations or by conduct of business rules approved by a public authority which do not formally prohibit it;

i) Entities which do not provide any investment service other than trading for their account, unless they are market makers or they trade for their account in an organised, frequent and systematic manner away from a regulated market or a multilateral trading facility, providing a service which is accessible to third parties in order to trade with them. Within the meaning of this paragraph, a market maker is an entity which maintains a constant presence on the financial markets in order to trade for its account and which buys and sells financial instruments at prices which it determines, using its own capital;

j) Entities trading in financial instruments for their account or providing investment services relating to futures contracts in commodities or other futures contracts stipulated by decree, to the clients of their principal activity, provided that said services are an adjunct to their principal activity, when said principal activity is perceived to be at group level within the meaning of paragraph III of Article L. 511-20 and it does not consist of the provision of investment services, the execution of banking transactions or the provision of payment services;

k) Financial investment advisors, under the conditions and within the limits determined in Chapter I of Part IV;

l) Individuals or legal entities, other than financial investment advisors, providing investment advice in the context of another business activity which is not governed by this Part, provided that the provision of said advice is not specifically remunerated;

m) Entities whose principal activity consists of trading for their account in commodities or derivatives on commodities. This exception shall not apply where the entity trading for its account in commodities or derivatives on commodities is part of a group, within the meaning of paragraph III of Article L. 511-20, having as its principal activity the provision of investment services, the execution of banking transactions or the provision of payment services;

n) Firms whose investment services consist exclusively of trading for their account on financial futures markets, or on spot markets solely in order to cover positions on derivatives markets, or which trade or undertake price formation on behalf of other members of said markets, and which are covered by the guarantee of a member of a clearing house, where liability for the contracts entered into by said firms is assumed by a member of a clearing house.

*Replaced by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

*Amended by rectification of 19 May 2007*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 14 Official Journal of 16 July 2009*

*Amended by Act No. 2010-1249 of 23 October 2010 Art. 36 Official Journal of 23 October 2010 (h repealed)*

*Article L. 531-3, repealed par Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

## Section 2 Investment firms

Article L. 531-4. - Investment firms are legal entities, other than credit institutions, which provide investment services in the normal course of their business.

*Amended by Act No. 2001-420 of 15 May 2001 Art. 8 I Official Journal of 16 May 2001.*

Article L. 531-5. - Investment firms may, under conditions set forth by the Minister for the Economy, acquire and hold equity interests in firms which already exist or are in the process of being formed.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 VI 1 Official Journal of 2 August 2003*

Article L. 531-6. – I. - Changes in the distribution of an investment firm's capital must be reported to the Autorité de Contrôle Prudentiel.

Acquisitions or extensions of direct or indirect equity interests in an investment firm must be authorised by the Autorité de Contrôle Prudentiel.

Where a reduction or sale of a direct or indirect equity interest is reported to it, the Autorité de Contrôle Prudentiel shall ensure that said transaction does not breach the conditions which the authorisation granted to the investment firm was contingent on.

A decree issued following consultation with the Conseil d'Etat determines, inter alia, the assessment criteria the Autorité de Contrôle Prudentiel shall apply to the transactions referred to in the second paragraph.

The terms and conditions of the procedures referred to in this paragraph I are set forth in the Order referred to in Article L. 611-4.

II. - In the event of a breach of the rules set forth in paragraph I, and without prejudice to the provisions of Article L. 233-14 of the Commercial Code, the Public Prosecutor, the Autorité de Contrôle Prudentiel or any shareholder or partnership-share holder may ask the court to suspend exercise of the voting rights attached to the shares and partnership shares of an investment firm, other than a portfolio management company, which are irregularly held, whether directly or indirectly, until the situation is regularised.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46, V 1, VI 1 and Art. 73 1 Official Journal of 2 August 2003*

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 70 Official Journal of 7 May 2005*

*Amended by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

*Amended by Order No. 2009-897 of 24 July 2009 Art. 1 Official Journal of 25 July 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 5 Official Journal of 22 January 2010*

Article L. 531-7. - The Minister for the Economy shall determine the circumstances in which investment firms may engage professionally in an activity other than those indicated in Article L. 321-1 and L. 321-2.

*Amended by Act No. 2001-420 of 15 May 2001 Art. 8 II Official Journal of 16 May 2001*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 VI 1 Official Journal of 2 August 2003*

*Amended by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

Article L. 531-8 - Each investment firm, each market undertaking and each clearing house shall belong to an association of its choice which is responsible for the collective representation and the defence of the rights and interests of its members. Any association thus constituted is affiliated with the association referred to in Article L. 511-29.

Article L. 531-9. - Where Articles L. 531-5, L. 531-6 and L. 531-7 apply to portfolio management companies, the powers of the authorities referred to in said Articles shall be exercised by the Autorité des Marchés Financiers.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 VI 1 Official Journal of 2 August 2003*

*Amended by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007 and rectification of 19 May 2007*

*Amended by Order No. 2007-1490 of 18 October 2007 Art. 4 Official Journal of 19 October 2007*

## Section 3 Prohibitions

Article L. 531-10. – Without prejudice to the provisions of Article L. 531-2, it is prohibited for any individual or legal entity other than an investment service provider or an entity referred to in Article L. 532-18 or Article L. 532-18-1 to provide investment services to third parties in the normal course of their business.

*Amended by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

Article L. 531-11. - Any firm other than an investment firm is prohibited from using a trade name, corporate name, advertising or, more generally, any wording, which might imply that it is an authorised investment firm or could create confusion in that regard.

An investment firm is prohibited from giving the impression that it belongs to a category other than that for which it received authorisation, and from creating confusion in that regard.

## Section 4 Professional secrecy

*Section inserted by Act No. 2008-776 of 4 August 2008 Art. 154 Official Journal of 5 August 2008*

Article L. 531-12.- Any member of a Board of Directors and, where applicable, of a Supervisory Board, and any individual who, in whatever capacity, participates in the administration or the management of an investment firm or who is employed by said firm shall be bound by professional secrecy.

In addition to the cases envisaged by the law, professional secrecy cannot be raised against the Autorité de Contrôle Prudentiel, the Banque de France or a court acting within the scope of criminal proceedings.

Investment firms may, moreover, send information covered by professional secrecy, on the one hand to the rating agencies for the purpose of rating financial instruments and, on the other hand, to the entities with which they negotiate, enter into or execute the transactions indicated below, whenever such information is needed for said transactions:

1 Credit transactions carried out, directly or indirectly, by one or more credit institutions;

2 Transactions in financial instruments, guarantees or insurance intended to cover a credit risk;

3 Acquisition of an equity interest or a controlling interest in a credit institution or an investment firm;

4 Assignments of assets or of goodwill;

5 Assignments or transfers of receivables or of contracts;

6 Service contracts entered into with a third party with a view to entrusting major operational duties to said party;

7 Where any type of contract or transaction is under consideration or is being worked on, provided that said entities belong to the same group as the originator of the communication.

In addition to the cases indicated above, credit institutions may send information covered by professional secrecy on a case by case basis but only when the entities concerned have expressly consented to them so doing.

Entities receiving information covered by professional secrecy which has been provided to them for the purposes of a transaction indicated above must preserve its confidentiality, even if the aforementioned transaction does not take place. In the event of the aforementioned transaction being entered into, however, said entities may, in turn, disclose the information covered by professional secrecy, under conditions identical to those referred to in this article, to the entities with which they negotiate, enter into or execute the transactions referred to above.

*Inserted by Act No. 2008-776 of 4 August 2008 Art. 154 Official Journal of 5 August 2008*

## Chapter II Professional practice requirements

### Section 1 Approval

#### Subsection 1 Approval conditions and procedures

Article L. 532-1. - In order to provide investment services, investment firms and credit institutions must obtain approval. Without prejudice to the provisions of the third paragraph below, said approval shall be granted by the Autorité de Contrôle Prudentiel. It shall not be required for the simple provision of one or more of the services referred to in Article L. 321-2.

Prior to the granting of approval for the services referred to in paragraph 4 or 5 of Article L. 321-1, investment firms and credit institutions must obtain approval from the Autorité des Marchés Financiers for their programme of operations, as provided for in Article L. 532-4.

Where the service referred to in paragraph 4 of Article L. 321-1 is intended to constitute its principal activity, the investment firm's approval shall be granted by the Autorité des Marchés Financiers.

A decree issued following consultation with the Conseil d'Etat determines the implementing provisions of this article. It specifies, inter alia, the manner in which the decisions shall be taken and notified and the specific provisions applicable to investment firms which are direct or indirect subsidiaries of investment firms or credit institutions which have either been authorised in another Member State of the European Community or which do not come under the law of such a State.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 40 I, Art. 46 V 1 and 2 Official Journal of 2 August 2003*

*Amended by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Article L. 532-2. - For the purpose of granting approval to an investment firm, the Autorité de Contrôle Prudentiel shall verify whether it:

1. Has its registered office and its effective management in France;

2. Has, given the nature of the service it wishes to provide, adequate initial capital as determined by the Minister for the Economy as well as appropriate and adequate financial resources;

3. Has indicated the identities of its direct or indirect shareholders, individuals or legal entities, who have a qualified equity holding, and the amount of their holdings; the Autorité de Contrôle Prudentiel shall assess the status of said shareholders with regard to the necessity of ensuring the investment firm's sound and prudent management;

4. Is effectively managed by at least two individuals possessing the requisite respectability and experience for their duties, so as to guarantee its sound and prudent management. The General Regulation of the Autorité des Marchés Financiers determines the circumstances in which a portfolio management company may, by way of exception, be effectively managed by one individual. It stipulates the measures which must be taken to ensure the sound and prudent management of the company concerned;

5. It has a programme of operations for each of the services it intends to offer which specifies the manner in which it envisages providing the investment services concerned and indicates the types of transactions envisaged and its organisational structure.

6. Belongs to a securities guarantee mechanism managed by the Fonds de Garantie des Dépôts (Deposit Guarantee Fund) pursuant to Articles L. 322-1 to L. 322-4.

The Autorité de Contrôle Prudentiel may attach special conditions to the approval intended to maintain the balance of the company's financial structure. The Autorité de Contrôle Prudentiel may also make the granting of approval subject to compliance with undertakings given by the applicant firm.

The Autorité de Contrôle Prudentiel may refuse to grant approval where performance of the supervisory function in relation to the applicant firm is likely to be impeded either by the existence of ownership links or of direct or indirect control between the firm and other individuals or legal entities, or by the existence of laws or regulations of a State which is not party to the European Economic Area Agreement which one or more of said legal entities or individuals is/are governed by.

The investment firm must meet the conditions of its approval at all times.

*Amended by Act No. 2001-420 of 15 May 2001 Art. 7 II 1 Official Journal of 16 May 2001*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 40 II, Art. 46 V 1 Official Journal of 2 August 2003*

*Amended by Order No. 2004-482 of 3 June 2004 Art. 3 Official Journal of 5 June 2004*

*Amended by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

*Amended by Order No. 2007-1490 of 18 October 2007 Art. 4 Official Journal of 19 October 2007*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Article L. 532-3. - In addition to the conditions set forth in Article L. 511-10, prior to granting approval authorising a credit institution to provide one or more investment services, the Autorité de Contrôle Prudentiel shall verify that it has:



1. Sufficient initial capital as determined by the Minister for the Economy, commensurate with the nature of the service it intends to provide;

2. A programme of operations for each of the services it intends to offer which specifies the manner in which it envisages providing the investment services concerned and indicates the types of transactions envisaged and its organisational structure.

Moreover, the credit institution must have joined a securities guarantee mechanism managed by the deposit guarantee fund pursuant to Articles L. 322-1 to L. 322-4.

The Autorité de Contrôle Prudentiel may attach special conditions to the approval intended to maintain the balance of the firm's financial structure. The Autorité de Contrôle Prudentiel may also make the granting of approval subject to compliance with undertakings given by the applicant firm.

The investment firm must meet the conditions of its approval at all times.

*Amended by Act No. 2001-420 of 15 May 2001 Art. 7 II 2 Official Journal of 16 May 2001*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 40 II, Art. 46 VI 1 Official Journal of 2 August 2003*

*Amended by Order No. 2004-482 of 3 June 2004 Art. 3 Official Journal of 5 June 2004*

*Amended by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

*Amended by Order No. 2007-1490 of 18 October 2007 Art. 4 Official Journal of 19 October 2007*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Article L. 532-3-1. - Any change to the conditions which the authorisation granted to an investment firm or a credit institution providing one or more investment services was made subject to, shall require either the prior authorisation of the Autorité de Contrôle Prudentiel, or a declaration or notification, as determined by an order of the Minister for the Economy.

In cases in where authorisation is required, it may, itself, be accompanied by special conditions consistent with the purpose indicated in the eighth paragraph of Article L. 532-2 and the fifth paragraph of Article L. 532-3 or conditional upon compliance with undertakings given by the company or the institution.

*Amended by Act No. 2001-420 of 15 May 2001 Art. 7 II 3 Official Journal of 16 May 2001*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 VI 2 Official Journal of 2 August 2003*

Article L. 532-3-2. - Without prejudice to the provisions of Article L. 229-4 of the Commercial Code, the Autorité de Contrôle Prudentiel also has the power, pursuant to the provisions of Article 8 (14) and Article 19 of Council Regulation (EC) No. 2157/2001 of 8 October 2001 on the Statute for a European company (SE), to oppose the transfer of the registered office of an investment firm formed as a European company registered in France where said transfer would give rise to a change of the applicable law, and to oppose the formation of a European company through a merger involving an investment firm approved in France. Said decision shall be appealable before the Conseil d'Etat.

*Inserted by Act No. 2005-842 of 26 July 2005 Art. 13 Official Journal of 27 July 2005*

Article L. 532-4. - Prior to granting approval for a programme of operations relating to the investment services referred to in paragraph 4 of Article L. 321-1, the Autorité de Contrôle Prudentiel shall assess the quality of said programme relative to the respectability and competence of the senior managers and the

suitability of their experience for their duties, as well as the manner in which the service provider envisages providing the investment services concerned. Said programme shall indicate the types of transactions envisaged and the organisational structure of the firm or institution providing the investment services.

*Amended by Act No. 2001-420 of 15 May 2001 Art. 10 3 Official Journal of 16 May 2001*

*Amended by Act No. 2001-1168 of 11 December 2001 Art. 27 12 Official Journal of 12 December 2001*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 40 III Official Journal of 2 August 2003*

*Amended by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

Article L. 532-5. - Investment service providers authorised to provide an investment service referred to in Article L. 321-1 as of 1 November 2007 shall be exempted, for the provision of said service, from the procedures referred to in Article L. 532-1 and shall have the benefit of the provisions of Articles L. 532-23 to L. 532-25.

*Replaced by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

## Subsection 2 Withdrawal of approval and delisting

Article L. 532-6. - Withdrawal of approval from an investment firm other than a portfolio management company shall be pronounced by the Autorité de Contrôle Prudentiel at the request of the investment firm. It may also be decided without consultation by the Autorité de Contrôle Prudentiel where the investment firm no longer meets the conditions nor fulfils the undertakings which its approval or a subsequent approval was contingent upon, or where the institution did not make use of its approval within twelve months or has not traded for at least six months or where it obtained said approval through false declarations or by any other improper means;

Withdrawal of approval shall take effect upon expiry of a period determined by the Autorité de Contrôle Prudentiel.

During said period:

1. The investment firm shall remain subject to the supervision of the Autorité de Contrôle Prudentiel and of the Autorité des Marchés Financiers. The Autorité de Contrôle Prudentiel and the Autorité des Marchés Financiers may impose the disciplinary sanctions indicated in Article L. 612-39 and the penalties indicated in Article L. 621-15, on any investment firm whose approval has been withdrawn;

2. It may carry out only the transactions which are strictly necessary to settle its investment services;

3. The firm may refer to its investment-firm status only to state that its approval is in the process of being withdrawn.

Securities issued by said firm which are not tradable on a regulated market shall be redeemed by the firm on their due dates or, if the due date falls after expiry of the period referred to above, on the date determined by the Autorité de Contrôle Prudentiel.

Upon expiry of said period, the firm shall lose its investment-firm status and must have changed its corporate name.

As an exception to the provisions of paragraphs 4 and 5 of Article 1844-7 of the Civil Code, the early dissolution of an investment firm cannot be declared until its approval has been withdrawn by the Autorité de Contrôle Prudentiel. As an exception to Articles L. 123-1 and L. 237-3 of the Commercial Code, the publication and the amending entry in the Trade and Companies Register concerning the pronouncement of such

dissolution must indicate the date of the Autorité de Contrôle Prudentiel's decision to withdraw approval. Until the close of the liquidation proceedings, the firm shall remain subject to the supervision of the Autorité de Contrôle Prudentiel or the Autorité de Contrôle Prudentiel, which may impose all sanctions referred to in Articles L. 612-39 and L. 621-15 of this code. It shall not refer to its investment-firm status without indicating that it is in liquidation.

*Amended by Act No. 2001-420 of 15 May 2001 Art. 7 II 6 Official Journal of 16 May 2001*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 III 12, Art. 74 2 Official Journal of 2 August 2003*

*Amended by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

*Amended by Act No. 2007-1774 of 17 December 2007 Art. 10 Official Journal of 18 December 2007*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 5 Official Journal of 22 January 2010*

Article L. 532-7. - The Autorité de Contrôle Prudentiel may order the deletion from the list of approved investment firms of an investment firm other than a portfolio management company as a disciplinary measure.

Said delisting shall entail the liquidation of the legal entity where its registered office is in France. For the branches of investment firms having their registered office outside the European Economic Area, said delisting shall entail liquidation of the branch's balance-sheet and of its off-balance-sheet items.

Any firm which has been deleted shall remain subject to the supervision of the Autorité de Contrôle Prudentiel until the close of the liquidation proceedings. It may carry out only the transactions which are strictly necessary to settle its affairs. It may refer to its investment-firm status only to state that its approval is in the process of being withdrawn.

Article L. 532-8. - The Minister for the Economy shall determine the implementing provisions of Articles L. 532-6 and L. 532-7. He shall determine, inter alia, the manner in which:

a) Decisions to withdraw approval and to effect delisting shall be made known to the public;

b) Financial instruments entered in the firm's books may be transferred to another investment service provider or to the issuing legal entity.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 VI 1 Official Journal of 2 August 2003*

### Subsection 3 Provisions relating to portfolio management companies

#### Paragraph 1 Approval

Article L. 532-9. - Portfolio management companies are investment firms which provide, as their principal activity, the investment service referred to in paragraph 4 of Article L. 321-1, or which manage one or more collective investment undertakings referred to in 1, 2, 5 and 6 of paragraph I of Article L. 214-1.

Portfolio management companies are approved by the Autorité des Marchés Financiers.

Prior to granting approval to a portfolio management company, the Autorité shall verify that it:

1. Has its registered office and its effective management in France;

2. Has sufficient initial capital as well as appropriate and adequate financial resources;

3. Has indicated the identities of its direct or indirect shareholders, individuals or legal entities, who have a qualified equity holding, as well as the amount of their holdings; the Autorité shall assesses the status of said shareholders with regard to the necessity of ensuring sound and prudent management;

4. Is effectively managed by at least two individuals possessing the requisite respectability and experience for their duties, so as to guarantee its sound and prudent management. The General Regulation of the Autorité des Marchés Financiers determines the circumstances in which a portfolio management company may, by way of exception, be effectively managed by one individual. It stipulates the measures which must be taken to ensure the sound and prudent management of the company concerned;

5. Has a programme of operations for each of the services it intends to offer which specifies the manner in which it envisages providing the investment services concerned or the management of the entities referred to in the first paragraph and indicates the types of transactions envisaged as well as its organisational structure.

6. Belongs to a securities guarantee mechanism managed by the Fonds de Garantie des Dépôts pursuant to Articles L. 322-1 to L. 322-4.

The Autorité des Marchés Financiers may refuse to grant approval if performance of the supervisory function in relation to the portfolio management company is likely to be impeded either by the existence of ownership links or of direct or indirect control between the company and individuals or legal entities, or by the existence of laws or regulations of a State which is not party to the European Economic Area Agreement which one or more of said legal entities or individuals is/are governed by.

The Autorité de Contrôle Prudentiel shall rule on the matter within three months of submission of the application, and its grounded decision shall be notified to the applicant.

The Committee may attach special conditions to the approval intended to maintain the balance of the management company's financial structure. It may also make the granting of approval subject to compliance with undertakings given by the applicant company.

The General Regulation of the Autorité des Marchés Financiers stipulates the approval criteria for portfolio management companies.

Portfolio management companies must meet the conditions of their approval at all times.

*Amended by Act No. 2001-420 of 15 May 2001 Art. 7 II 4° and Art. 10 4° Official Journal of 16 May 2001*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 III 13, V 1, 2 Official Journal of 2 August 2003*

*Amended by Order No. 2004-482 of 3 June 2004 Art. 3 Official Journal of 5 June 2004*

*Amended by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

*Amended by Order No. 2008-556 of 13 June 2008 Art. 16 Official Journal of 14 June 2008*

*Amended by Order No. 2008-1081 of 23 October 2008 Art. 7 Official Journal of 24 October 2008*

*Inserted by Order No. 2009-107 of 30 January 2009 Art. 1 Official Journal of 31 January 2009*

Article L. 532-9-1. - I. – Changes in the distribution of a portfolio management company's capital must be notified to the Autorité des Marchés Financiers.

Direct or indirect acquisitions of, or increases in, equity interests in a portfolio management company must be authorised par the Autorité des Marchés Financiers.

Where a reduction in, or sale of, a direct or indirect holding is reported to it, the Autorité de Contrôle Prudentiel shall check to ensure that said transaction does not affect the portfolio management company's capacity to meet the conditions stipulated for its approval.

A decree issued following consultation with the Conseil d'Etat determines, inter alia, the assessment criteria that the Autorité de Contrôle Prudentiel shall apply to the transactions referred to in the second paragraph. The rules for the procedures referred to in this paragraph I are set forth in the General Regulation of the Autorité des Marchés Financiers.

II - Any change to the conditions attached to an approval granted to a portfolio management company shall require, as applicable, prior approval from the Autorité des Marchés Financiers, a declaration or a notification, as determined by the General Regulation of the Autorité des Marchés Financiers.

In the event of no prior notice being given concerning any change in the structure of a portfolio management company's shareholder base, and without prejudice to the provisions of Article L. 233-14 of the Commercial Code, the Autorité des Marchés Financiers, the Public Prosecutor or any shareholder or holder of membership shares may ask the court to suspend the exercise of the voting rights attached to the shares and membership shares of the management company which are irregularly held, whether directly or indirectly, until the situation is regularised.

In cases where approval must be given, it may, itself, be accompanied by special conditions consistent with the purpose indicated in the penultimate paragraph of Article L. 532-9 or may be conditional upon compliance with undertakings given by the management company.

*Amended by Act No. 2001-420 of 15 May 2001 Art. 7 II 5 Official Journal of 16 May 2001*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 V 1, Art. 73 2 Official Journal of 2 August 2003*

*Amended by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

*Amended by Order No. 2009-897 of 24 July 2009 Art. 1 Official Journal of 25 July 2009*

Article L. 532-9-2. - Without prejudice to the provisions of Article L. 229-4 of the Commercial Code, the Autorité des Marchés Financiers has the power, pursuant to the provisions of Article 8 (14) and Article 19 of Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE), to oppose the transfer of the registered office of a portfolio management company created as a European company registered in France which would result in a change in the applicable law, and likewise the creation of a European company through a merger involving a portfolio management company approved in France. Such decisions shall be appealable before the Conseil d'Etat.

*Inserted by Act No. 2005-842 of 26 July 2005 Art. 13 Official Journal of 27 July 2005*

Article L. 532-9-3. – Without prejudice to the provisions of Article 26-6 of Act No. 47-1775 of 10 September 1947 on the cooperative charter, the Autorité de Contrôle Prudentiel has the power, pursuant to paragraph 14 of Article 7 and to Article 21 of Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE), to oppose the transfer of the registered office of a portfolio management company constituted in the form of a European cooperative society registered in France where said transfer would give rise to

a change of the applicable law, and to oppose the formation of a European cooperative society through a merger involving a cooperative portfolio management company approved in France. Said decision shall be appealable before the Conseil d'Etat.

*Inserted by Act No. 2008-649 of 3 July 2008 Art. 20 Official Journal of 4 July 2008*

## Paragraph 2 Withdrawal of approval and delisting

Article L. 532-10. - Withdrawal of approval from a portfolio management company shall be ordered by the Autorité de Contrôle Prudentiel at the request of the company. It may also be decided by the Autorité without consultation if the company no longer meets the conditions or fulfils the undertakings which its approval or a subsequent approval was contingent upon, or if the company did not make use of its approval within twelve months or has not traded for at least six months, or if it obtained the approval by making false declarations or by any other improper means.

Withdrawal of approval shall take effect upon expiry of a period determined by the Autorité des Marchés Financiers.

During said period:

1. The portfolio management company is subject to the supervision of the Autorité des Marchés Financiers. The Autorité des Marchés Financiers may impose the sanctions indicated in Article L. 621-15 on any company whose approval has been withdrawn, including delisting;

2. It may only carry out transactions which are strictly necessary to protect the clients' interests.

3. It may refer to its portfolio-management-company status only to state that its approval is in the process of being withdrawn.

Upon expiry of said period, the company shall lose its portfolio-management-company status and must have changed its corporate name.

*Amended by Act No. 2001-420 of 15 May 2001 Art. 7 II 7 Official Journal of 16 May 2001*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 III 14, V 1 Official Journal of 2 August 2003*

*Amended by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

Article L. 532-11. - Any portfolio management company having decided upon its early dissolution before said period has expired shall remain subject to the supervision of the Autorité des Marchés Financiers until the close of its liquidation proceedings, and the latter may impose on it the penalties indicated in Article L. 621-15, including delisting. It may refer to its portfolio-management-company status only when stating that it is in liquidation.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 III 15, V 1 Official Journal of 2 August 2003*

Article L. 532-12. - The Autorité des Marchés Financiers may order the delisting of a portfolio management company from the list of approved portfolio management companies.

Delisting shall entail the liquidation of the legal entity where its registered office is in France. For the branches of investment firms having their registered office outside the European Economic Area, said delisting shall entail the liquidation of the branch's balance-sheet and of its off-balance-sheet items.

Any company which has been delisted shall remain subject to the supervision of the Autorité des Marchés Financiers until the close of the liquidation proceedings. It may only carry out transactions which are strictly necessary to protect the clients' interests. It may refer to its portfolio-management-company status only to state that it has been deleted.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 III 16, V 1 Official Journal of 2 August 2003*

Article L. 532-13. - The Autorité des Marchés Financiers stipulates the implementing provisions of Articles L. 532-10 to L. 532-12. It determines, inter alia, the manner in which decisions to withdraw approval or to delist shall be made known to the public.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 III 17, V 1 Official Journal of 2 August 2003*

*Amended by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

#### Subsection 4 Representative offices

Article L. 532-14. - Where investment firms open offices in France to provide information, liaison or representation services, the opening of said offices must be notified in advance to the Autorité de Contrôle Prudentiel, which shall inform the Autorité des Marchés Financiers thereof.

Said offices shall display the trade name or the corporate name of the institution that they represent.

*Amended by LSF 2003-706 Art. 46 V 1*

Article L. 532-15. - Where the offices are opened by portfolio management companies, the notification referred to in Article L. 532-14 shall be sent to the Autorité des Marchés Financiers, which shall inform the Autorité de Contrôle Prudentiel thereof.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 III 18, V 1 Official Journal of 2 August 2003*

### Section 2 Freedom of establishment and freedom to provide services in the States party to the European Economic Area Agreement

#### Subsection 1 General provisions

Article L. 532-16. - In this section and with reference to the provisions relating to freedom of establishment and freedom to provide services:

1. The term "competent authorities" shall mean the authorities in a member State of the European Community authorised pursuant to the legislation of said State to approve or supervise the investment firms having their registered office there;

2. The term "home State" shall mean, for an investment firm, the Member State in which it has its registered office or, if its domestic law prohibits this, the Member State in which its effective management takes place. For a regulated market, the term "home State" shall mean the Member State in which the regulated market is recognised or, if, under its domestic law, it does not have a registered office, the Member State in which its effective management is located.

3. The term "host State" shall mean any Member State in which the investment firm conducts its business through a branch or via freedom to provide services or the Member State in which a regulated market of another Member State provides facilities that give members established in said first Member State remote access to its trading system;

4. The term "branch" shall mean one or more elements, lacking legal personality, of an investment firm, whose purpose is to provide investment services. All the operational sites established in the same Member State by an investment firm having its registered office in another Member State shall be deemed to constitute a single branch;

5. The term "transaction executed under freedom to provide services" shall mean the means through which an investment firm provides an investment service in a host State other than through a permanent presence in said State.

*Amended by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

Article L. 532-17. - For the purposes of this section, investment firms whose registered office or effective management is established in another State party to the European Economic Area Agreement shall be treated as investment firms having their registered office or effective management in a Member State of the European Community other than France.

#### Subsection 2 Freedom to provide services and freedom of establishment in France

Article L. 532-18. - Within the compass of the services it is authorised to provide in its home State, and in accordance with the approval it has received there, any legal entity or individual approved for the purpose of providing investment services may, without prejudice to the provisions of Articles L. 511-21 to L. 511-26, provide investment services and related services under freedom to provide services in the territory of Metropolitan France and the overseas *départements* of Saint Barthélemy and Saint Martin.

For the purposes of Articles L. 213-3, L. 421-17 to L. 421-19, L. 211-36, L. 211-36-1, L. 531-10, L. 621-17-2 to L. 621-17-7 and L. 621-18-1, the legal entities and individuals referred to in the previous paragraph shall be treated as investment service providers.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 III 19, V 1 and Art. 91 5 Official Journal of 2 August 2003*

*Amended by Act No. 2005-811 of 20 July 2005 Art. 2 Official Journal of 21 July 2005*

*Amended by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

*Amended by Order No. 2008-698 of 11 July 2008 Art. 1 Official Journal of 16 July 2008*

*Amended by Order No. 2009-15 of 8 January 2009 Art. 4 Official Journal of 9 January 2009*

Article L. 532-18-1. - Within the compass of the services it is authorised to provide in its home State, and in accordance with the approval it has received there, any legal entity or individual approved for the purpose of providing investment services may, without prejudice to the provisions of Articles L. 511-21 to L. 511-28, establish branches to provide investment services and related services in the territory of Metropolitan France and the overseas *départements* of Saint Barthélemy and Saint Martin.

For the purposes of Articles L. 213-3, L. 421-17 to L. 421-19, L. 211-36, L. 211-36-1, L. 211-35, L. 531-10, of paragraph 5 of



Article L. 533-10, Articles L. 621-17-2 to L. 621-17-7 and L. 621-18-1, the legal entities and individuals referred to in the previous paragraph shall be treated as investment service providers.

Where an investment service provider having its registered office in another Member State uses tied agents referred to in Article L. 545-1 established in the territory of Metropolitan France and the overseas *départements* of Saint Barthélemy and Saint Martin, said agents shall be treated as a branch.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

*Amended by Order No. 2007-1490 of 18 October 2007 Art. 4 Official Journal of 19 October 2007*

*Amended by Order No. 2008-698 of 11 July 2008 Art. 1 Official Journal of 16 July 2008*

*Amended by Order No. 2009-15 of 8 January 2009 Art. 4 Official Journal of 9 January 2009*

Article L. 532-18-2. - The provisions of Articles L. 425-2, L. 533-1, L. 533-6, L. 533-9, L. 533-11 to L. 533-20, the first paragraph of Article L. 533-23, and Articles L. 533-24 and L. 632-16 shall apply to the branches referred to in Article L. 532-18-1 in respect of services provided in the territory of Metropolitan France and the overseas *départements* of Saint Barthélemy and Saint Martin.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

*Amended by Order No. 2007-1490 of 18 October 2007 Art. 4 Official Journal of 19 October 2007*

*Amended by Order No. 2008-698 of 11 July 2008 Art. 1 Official Journal of 16 July 2008*

Article L. 532-19. - In order to exercise supervision over an investment service provider having the benefit of the scheme referred to in Article L. 532-18, the competent authorities of its home State may require that its branches in France send them any information that is pertinent to the exercise of said supervision.

Subject to giving prior notice thereof to the Autorité des Marchés Financiers, which, where appropriate, shall inform the Autorité de Contrôle Prudentiel, the competent authority of the home Member State of an investment service provider having branches in the territory of Metropolitan France and the overseas *départements* of Saint Barthélemy and Saint Martin may, in the performance of its supervisory duties, carry out on-the-spot inspections of said branches either directly or through individuals specially empowered for said task by said authority. The findings of said inspections shall be sent to the Autorité des Marchés Financiers, notwithstanding the professional secrecy rules. Where appropriate, the Autorité des Marchés Financiers shall inform the Autorité de Contrôle Prudentiel of the aforementioned inspections and their findings.

Furthermore, the Autorité de Contrôle Prudentiel and the Autorité des Marchés Financiers shall carry out any verifications requested by the competent authorities of the home State, as appropriate.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 III 20, V 1 Official Journal of 2 August 2003*

*Amended by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

*Amended by Order No. 2008-698 of 11 July 2008 Art. 1 Official Journal of 16 July 2008*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Article L. 532-20. - The entities referred to in Article L. 532-18-1 shall send the Autorité des Marchés Financiers regular reports on the activities of their branch for statistical purposes.

The Autorité des Marchés Financiers may require the branches referred to in Article L. 532-18-1 to send it the information it needs in order to verify their compliance with the provisions applicable to them in the territory of Metropolitan France and the overseas *départements* of Saint Barthélemy and Saint Martin, for the cases referred to in Article L. 532-18-2. The obligations thus imposed on said branches cannot be stricter than those applicable to the investment service providers referred to in L. 531-1.

*Replaced by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

*Amended by Order No. 2008-698 of 11 July 2008 Art. 1 Official Journal of 16 July 2008*

Article L. 532-21. - Where the Autorité de Contrôle Prudentiel or the Autorité des Marchés Financiers has clear and demonstrable grounds for believing that an investment service provider operating within the freedom to provide services scheme or having a branch in the territory of Metropolitan France and the overseas *départements* of Saint Barthélemy and Saint Martin is in breach of the legal or regulatory obligations for which the home State authority has competence, it shall inform said authority thereof.

If, despite the measures taken by the competent authority of the home State or on account of the inadequate nature thereof, le investment service provider concerned continues to act in a manner which is clearly prejudicial to the interests of investors residing or established in France or to the orderly operation of the markets, the Autorité de Contrôle Prudentiel or the Autorité des Marchés Financiers, as applicable, shall, after informing the competent authority of the home State thereof, take all necessary measures to protect investors and maintain the proper operation of the markets, including, where necessary, a prohibition on the institution concerned continuing to provide services in the territory of Metropolitan France and the overseas *départements* of Saint Barthélemy and Saint Martin. The European Commission shall be informed of the adoption of said measures.

*Replaced by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

*Amended by Order No. 2008-698 of 11 July 2008 Art. 1 Official Journal of 16 July 2008*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Article L. 532-21-1. - Where the Autorité de Contrôle Prudentiel or the Autorité des Marchés Financiers finds that an investment service provider having a branch in the territory of Metropolitan France and the overseas *départements* of Saint Barthélemy and Saint Martin is failing to comply with the provisions of Articles L. 425-2, L. 533-1, L. 533-8, L. 533-9, L. 533-11 to L. 533-16, L. 533-18, L. 533-19, L. 533-24 and L. 632-16 or their implementing provisions, it shall demand that said service provider remedy said irregular situation.

If the investment service provider concerned does not take the necessary measures, the Autorité de Contrôle Prudentiel or the Autorité des Marchés Financiers, as applicable, shall take all appropriate measures to ensure that it discontinue said irregular situation. The competent authorities of the home State shall be informed of the nature of said measures.

If, despite the measures taken pursuant to the second paragraph, the investment service provider remains in violation of the legislative or regulatory provisions referred to in the first paragraph, the Autorité de Contrôle Prudentiel or the Autorité des Marchés Financiers, as applicable, may, after informing the competent authorities of the home State thereof, take the appropriate measures to prevent or penalise any further irregularities and, if necessary, to prohibit said service provider from provide further services in the territory of Metropolitan

France and the overseas *départements* of Saint Barthélemy and Saint Martin. The Autorité de Contrôle Prudentiel or the Autorité des Marchés Financiers shall convey its duly grounded decision to the service provider concerned. It shall inform the European Commission thereof.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

*Amended by Order No. 2008-698 of 11 July 2008 Art. 1 Official Journal of 16 July 2008*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Article L. 532-22. - A decree issued following consultation with the Conseil d'Etat determines the procedures that the Autorité de Contrôle Prudentiel and the Autorité des Marchés Financiers shall follow when exercising the powers devolved upon them by Articles L. 532-19 to L. 532-21-1. Said decree shall determine, in particular, the procedures used to send information to the competent authorities of the other Member States of the European Commission.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 III 23 Official Journal of 2 August 2003*

*Amended by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

### Subsection 3 Freedom to provide services and freedom of establishment in the States party to the European Economic Area Agreement

Article L. 532-23. - Any investment service provider having its registered office in the territory of Metropolitan France and the overseas *départements* of Saint Barthélemy and Saint Martin which is authorised to provide investment services pursuant to Article L. 532-1 and wishes to open a branch in another Member State shall send its plan to the Autorité de Contrôle Prudentiel and the Autorité des Marchés Financiers pursuant to rules set forth in a decree issued following consultation with the Conseil d'Etat.

Said plan and the information referred to in Article L. 533-23 relating to the protection of the branch's clients are shall be sent within three months of their receipt, to the authority of the host Member State designated as the point of contact within the meaning of paragraph 1 of Article 56 of Directive 2004/39/EC of 21 April 2004 under the terms and conditions laid down in the decree issued following consultation with the Conseil d'Etat referred to in the previous paragraph. The Autorité de Contrôle Prudentiel and the Autorité des Marchés Financiers may refuse to provide said information only where they have established that the administrative structures or the financial situation of the investment firm or of the credit institution providing the investment services would not warrant the opening of a branch.

The investment service provider concerned shall be informed when the information is sent to the host State.

Where the Autorité de Contrôle Prudentiel and the Autorité des Marchés Financiers refuse third party send the information referred to in the first paragraph the authority of the host Member State designated as the point of contact, they shall inform the investment firm or the credit institution concerned of the reasons for said refusal within three months of receiving said information.

Upon receipt of the reply from the authority of the host Member State designated as the point of contact or, in the absence of any reply from it within two months of receipt by said authority of the information sent to it by the Autorité de Contrôle

Prudentiel and the Autorité des Marchés Financiers, the branch of the applicant firm or institution may be opened and may commence trading, subject, where applicable, to its meeting the specific conditions stipulated for trading on a regulated market.

*Amended by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

*Amended by Order No. 2007-1490 of 18 October 2007 Art. 4 Official Journal of 19 October 2007*

*Amended by Order No. 2008-698 of 11 July 2008 Art. 1 Official Journal of 16 July 2008*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Article L. 532-24. - Any investment service provider having its registered office in the territory of Metropolitan France and the overseas *départements* of Saint Barthélemy and Saint Martin which is authorised to provide investment services pursuant to Article L. 532-1 and which wishes to conduct business in another Member State under freedom to provide services, must declare this to the Autorité de Contrôle Prudentiel and the Autorité des Marchés Financiers as determined in a decree issued following consultation with the Conseil d'Etat.

The Autorité de Contrôle Prudentiel and the Autorité des Marchés Financiers shall send said declaration to the competent authority of the host Member State designated as the point of contact within one month of receiving it in due form. The investment service provider may then begin to provide the investment services declared in the host Member State.

*Amended by LSF 2003-706 Art. 46 V 1*

*Amended by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

*Amended by Order No. 2008-698 of 11 July 2008 Art. 1 Official Journal of 16 July 2008*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Article L. 532-25. - The provisions of Articles L. 532-23 and L. 532-24 shall apply as of right to the provision of the investment services referred to in Article L. 321-1. They may also apply to the related services referred to in Article L. 321-2 if the applicant investment service provider is authorised to provide some or all of the services enumerated in Article L. 321-1.

*Amended by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

Article L. 532-26. The Autorité des Marchés Financiers performs alone the duties indicated in Articles L. 532-23 to L. 532-25, L. 532-27 and L. 612-21 with regard to the portfolio management companies and the companies that come under Article L. 532-18 and L. 532-18-1 which have as their principal activity the provision of the service referred to in paragraph 4 of Article L. 321-1.

*Replaced by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 5 Official Journal of 22 January 2010*

Article L. 532-27. - A decree issued following consultation with the Conseil d'Etat determines the manner in which the information referred to in Articles L. 532-23 to L. 532-26 shall be conveyed to the competent authorities of the Member State concerned.

*Amended by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

## Chapter III Obligations of investment service providers

### Section 1 General provisions

Article L. 533-1. – The investment service providers shall act in an honest, fair and professional manner which is conducive to the integrity of the market.

*Replaced by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

### Section 2 Management standards

Article L. 533-2. – Investment service providers must have sound administrative procedures, internal auditing mechanisms, effective risk assessment techniques and efficient means or monitoring and backing up their computer systems.

Investment service providers shall be required, with regard to their investment service activities, to apply the management standards intended to ensure their liquidity, their solvency and the balance of their financial structure determined by the Minister for the Economy pursuant to Article L. 611-3.

They must, in particular, comply with hedge ratios and risk-division ratios.

Non-compliance with the above obligations shall entail application of the procedure referred to in Articles L. 612-39 and L. 621-15.

*Replaced by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 5 Official Journal of 22 January 2010*

Article L. 533-3. - Investment service providers shall notify the Autorité de Contrôle Prudentiel of any major intra-group transactions, as indicated in Article L. 612-24.

*Replaced by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Article L. 533-4. - Where an investment service provider other than a portfolio management company has a parent company which is a credit institution, an investment firm or a financial holding company having its registered office in a State which is not a member of the European Community or a party to the European Economic Area Agreement, the Autorité de Contrôle Prudentiel shall verify, on its own initiative or at the request of the parent company or of a regulated entity approved in a Member State of the European Community or in another State party to the European Economic Area Agreement, that said investment service provider is subject to consolidated supervision by a competent authority in the third country which is equivalent to that applicable in France.

Where there is no equivalent consolidated supervision, the investment service provider shall be subject to the provisions relating to the consolidated supervision applicable in France.

The Autorité de Contrôle Prudentiel may also employ other methods to ensure equivalent consolidated supervision subject to approval from the competent authority responsible for consolidated supervision in the European Economic Area and

after consultation with the competent authorities in a member State or of another State party to the European Economic Area Agreement. It may, inter alia, require the formation of a financial holding company having its registered office in a Member State of the European Community or in another State party to the European Economic Area Agreement.

*Replaced by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

*Amended by Order No. 2007-1490 of 18 October 2007 Art. 4 Official Journal of 19 October 2007*

Article L. 533-4-1. – Investment firms other than portfolio management companies having at least one credit institution, investment firm or financial institution as a subsidiary or which hold an equity interest in such an institution or firm shall be required to apply management standards determined by order of the Minister for the Economy, as well as the rules relating to equity interests referred to in Article L. 531-5, to their consolidated financial situation.

*Inserted by Order No. 2007-571 of 19 April 2007 Art. 4 Official Journal of 20 April 2007*

### Section 3 Accounting and reporting obligations

Article L. 533-5. - Investment firms shall be bound by the obligations of Articles L. 511-33, L. 511-36, L. 511-37 and L. 511-39. They must have sound accounting procedures.

*Replaced by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

Article L. 533-6. - Investment service providers, market undertakings and clearing houses must provide the Banque de France with the information it requires to compile the monetary statistics.

*Replaced by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

Article L. 533-7. - Firms established in France which belong to a group that includes one or more portfolio management companies having their registered office in a Member State of the European Union or in another State party to the European Economic Area Agreement or in a State in which the agreements referred to in Article L. 632-16 are applicable, shall be required, notwithstanding any provision to the contrary, to send companies in the same group the information required to organise the prevention of money laundering and of terrorist financing. The provisions of the sixth paragraph of Article L. 511-34 shall apply to said information.

*Replaced by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

*Amended by Order No. 2007-1490 of 18 October 2007 Art. 4 Official Journal of 19 October 2007*

*Amended by Act No. 2008-776 of 4 August 2008 Art. 155 Official Journal of 5 August 2008*

Article L. 533-8. – Under the terms and conditions laid down in the General Regulation of the Autorité des Marchés Financiers, investment service providers shall retain the pertinent information on all the transactions in financial instruments they have entered into.

*Replaced by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

Article L. 533-9. – Investment service providers who carry out transactions relating to any financial instrument admitted to trading on a regulated market shall declare such transactions to the Autorité des Marchés Financiers irrespective of whether or not said transactions are carried out on a regulated market. The General Regulation of the Autorité des Marchés Financiers stipulates the terms of said declaration, as well as the circumstances in which said rule may be deviated from.

*Replaced by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

## Section 4 Organisational rules

Article L. 533-10. Investment service providers must:

1. Put in place rules and procedures that ensure compliance with the provisions applicable to them;

2. Put in place rules and procedures that ensure compliance by the individuals and legal entities placed under their authority or acting on their behalf with the provisions applicable to the service providers themselves and to said individuals and legal entities, in particular the conditions under which, and limits within which, the latter may carry out personal transactions for their account. Said conditions and limits shall be included in the internal rules and incorporated into the service provider's programme of operations;

3. Take all reasonable measures to prevent conflicts of interest from undermining their clients' interests. Said conflicts of interest are those which arise, on the one hand, between the service providers themselves, the individuals and legal entities placed under their authority or acting on their behalf or any other individual or legal entity directly or indirectly linked to them through a controlling relationship and, on the other hand, their clients, or between two clients, at the time of provision of any investment service or any related service or any combination of said services. Where said measures do not suffice to ensure, with a reasonable degree of certainty, that the risk of undermining the clients' interests will be avoided, the service provider shall clearly inform the clients of the general nature or the source of said conflicts of interest before acting on their behalf;

4. Take reasonable measures, using appropriate and proportionate resources and procedures, to ensure the continuity and regularity of the investment services provided, inter alia where they entrust important operational functions to third parties;

5. Keep a record of every service they provide and every transaction they carry out, thus enabling the Autorité des Marchés Financiers to monitor compliance with the investment service provider's obligations and, in particular, all of its obligations with regard to the clients, including potential clients;

6. Protect the clients' rights in the financial instruments that belong to them and prevent their use for own-account trading, unless the clients' express consent is obtained;

7. Protect the clients' rights in the funds belonging to them. Investment firms shall not under any circumstances use the funds deposited with them by their clients for own account trading, without prejudice to the provisions of Articles L. 440-7 to L. 440-10.

The General Regulation of the Autorité des Marchés Financiers sets forth the implementing provisions of this article. However, an order of the Minister for the Economy issued pursuant to Article L. 611-3 sets forth the implementing

provisions of paragraphs 4 and 7 for investment service providers other than portfolio management companies.

*Replaced by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

## Section 5 Conduct of business rules

### Subsection 1 Provisions common to all investment service providers

Article L. 533-11. – Where they provide investment services and related services to clients, investment service providers shall act in an honest, fair and professional manner which is conducive to the clients' interests.

*Replaced by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

Article L. 533-12. – I. – All the information, including communications of a promotional nature, that is sent to clients, including potential clients, by an investment service provider, shall have a content which is accurate, clear and not misleading. Communications of a promotional nature shall be clearly identifiable as such.

II. – Investment service providers shall communicate to their clients, including their potential clients, information that enables them to have a reasonable understanding of the nature of the investment service and the specific type of financial instrument proposed, as well as the risks associated therewith, thus enabling them to make their investment decisions in full knowledge of the facts.

*Replaced by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

Article L. 533-13. – I. – With a view to providing an investment consultancy service or a portfolio management service on behalf of third parties, investment service providers shall make enquiries of their clients, including their potential clients, concerning their knowledge of, and experience in, investment matters, as well as their financial situation and their investment objectives, so as to enable them to recommend suitable financial instruments to them or to manage their portfolio in a manner appropriate to their situation.

Where the clients, including potential clients, fail to provide the information requested, the service providers shall refrain from recommending financial instruments to them or from providing the third-party portfolio management service on their behalf.

II. – With a view to providing a service other than investment consultancy or a third-party portfolio management service on behalf of third parties, investment service providers shall ask their clients, including their potential clients, for information concerning their knowledge of, and experience in, investment matters in order to determine whether the product proposed to the clients or requested by them is suitable for them.

Where the clients, including potential clients, fail to provide the information required or where the service providers consider, on the basis of the information provided, that the service or the instrument is not suitable, the service providers shall inform said clients accordingly.

III. – Investment service providers may provide a receipt and transmission of orders service on behalf of third parties or an order execution service on behalf of third parties without applying the provisions of paragraph of II of this article where:

1. The service relates to financial instruments which are not complex, as defined in the General Regulation of the Autorité des Marchés Financiers;



2. The service is provided on the client's initiative, including that of a potential client;

3. The service provider has informed the client in advance, including a potential client, that the provider shall not be required to assess the appropriateness of the service or of the financial instrument;

4. The service provider has complied with the provisions of Article L. 533-10.

*Replaced by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

Article L. 533-13-1. — I. — Where the financial instruments offered to the clients give rise to the publication of information documents pursuant to Articles L. 214-12, L. 214-109 or L. 412-1, the investment service providers shall draw up agreements with the units responsible for publishing said information documents.

Said agreements shall determine, inter alia:

1 The conditions under which investment service providers shall be required to submit all promotional documents to said units, prior to their distribution, to enable them to verify their compliance with the information documents drawn up by said units;

2 The conditions under which said units shall make available to the service providers the information required to assess all the financial features of the financial instruments.

II. — A decree issued following consultation with the Conseil d'Etat shall set forth the implementing provisions of paragraph I, inter alia the cases and conditions in which the obligation to draw up an agreement is not warranted in view of the nature of the financial instruments or their method of distribution.

*Inserted by Order No. 2008-1271 of 5 December 2008 Art. 2 Official Journal of 6 December 2008*

Article L. 533-14. — The investment service providers shall make up a dossier which contains the document(s) they and their clients have approved and in which the rights and obligations of the parties shall be set forth, as well as the conditions under which the former shall provide services to the latter.

Where they provide an investment service other than investment consultancy, investment service providers shall enter into a non-professional agreement with their new clients which determines the principal rights and obligations of the parties in the conditions and under the terms set forth in the General Regulation of the Autorité des Marchés Financiers.

New clients are those who are not bound by an agreement in force as of 1 November 2007.

For the purposes of the first and second paragraphs, the rights and obligations of the parties to the contract may be determined by reference to other legal documents or texts.

*Replaced by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

Article L. 533-15. — Investment service providers shall report to their clients on the services provided to them. Said report shall indicate, where appropriate, the costs associated with the transactions carried out and with the services provided on behalf of the client.

*Replaced by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

Article L. 533-16. — The General Regulation of the Autorité des Marchés Financiers sets forth the implementing provisions of Articles L. 533-11 to L. 533-15, taking account of the type of service offered or provided, the nature of the financial instrument involved and the client's, or potential client's, professional status or otherwise.

A professional client is a client who has the experience, knowledge and competence required to make his own investment decisions and correctly assess the risks incurred.

A decree shall set forth the criteria according to which clients shall be deemed to be professional.

Clients who meet said criteria may ask to be treated as non-professional clients and the investment service providers may agree to grant them a higher level of protection, according to terms set forth in the General Regulation of the Autorité des Marchés Financiers.

The General Regulation of the Autorité des Marchés Financiers also stipulates the terms and conditions under which clients who do not meet said criteria may, at their request, be treated as professional clients.

*Replaced by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

Article L. 533-17. — The General Regulation of the Autorité des Marchés Financiers stipulates the conditions under which an investment service provider which receives, through another investment service provider, an instruction to provide investment services or related services on behalf of a client, may rely on the steps taken by the latter. The investment service provider which conveyed the instruction shall remain liable for the completeness and accuracy of the information provided.

An investment service provider which receives an instruction as described above to provide services on behalf of the client may also base itself on any recommendation relating to the service or to the transaction in question that was given to the client by said other service provider. The investment service provider which conveyed the instruction shall remain liable for the appropriateness of the recommendations or advice provided to the client concerned.

An investment service provider which receives an instruction or an order from a client through another investment service provider shall remain liable for the provision of the service or the execution of the transaction in question on the basis of the aforementioned information or recommendations, pursuant to the relevant provisions of this Part.

*Replaced by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

Article L. 533-18. — I. — When executing orders, investment service providers shall take all reasonable measures to obtain the best possible result for their clients, taking account of the cost, the swiftness, the likelihood of execution and settlement, the size and nature of the order or any other consideration pertinent to its execution. Nevertheless, wherever there is a specific instruction given by the clients, the service providers shall execute the order pursuant to said instruction.

II. — Investment service providers shall establish and implement effective provisions to meet the requirements of the first paragraph. They shall establish and implement an order-execution policy that enables them to obtain the best possible result for their clients' orders.

III. — For each instrument category, the order-execution policy shall include information on the different systems on which the investment service provider shall execute its clients' orders and the factors influencing the choice of said system. Said information shall cover at least the systems that permit the service provider to obtain, in most cases, the best possible result from execution of the clients' orders.

The investment service providers shall provide their clients with appropriate information on their order execution policy. They shall obtain their clients' prior consent for said execution policy.

Where the order execution policy allows the clients' orders to be executed outside a regulated market or a multilateral trading facility, the investment service provider shall inform its clients or its potential clients of said possibility. The service providers shall obtain their clients' express consent before executing their orders outside a regulated market or a multilateral trading facility.

Investment service providers may obtain such consent either through a general agreement or for specific transactions.

IV. – When so requested by their clients, investment service providers must be able to show that they have executed their orders in accordance with their execution policy.

V. – The General Regulation of the Autorité des Marchés Financiers sets forth the implementing provisions of this article in a manner that adapts them according to whether the investment service providers execute the orders, convey them or issue them without executing them themselves.

*Replaced by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

Article L. 533-19. – When executing orders on behalf of third parties, investment service providers shall adopt and apply procedures which ensure swift and fair execution of their clients' orders relative to the orders of their other clients or their own-account orders.

The General Regulation of the Autorité des Marchés Financiers sets forth the implementing provisions of the client-order-processing rules applicable to all investment service providers.

*Replaced by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

Article L. 533-20. – Investment service providers who are authorised to receive and transmit orders on behalf of third parties, to execute orders for third parties or to trade for their own account may generate transactions between eligible counterparties or enter into transactions with such counterparties without complying with the obligations referred to in Articles L. 533-11 to L. 533-16, L. 533-18 and the first paragraph of L. 533-19 for said transactions or for any related service directly linked to them.

A decree shall set forth the criteria according to which counterparties shall be deemed to be eligible counterparties.

The General Regulation of the Autorité des Marchés Financiers sets forth the conditions under which eligible counterparties may ask to be treated as clients.

*Replaced by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

## Subsection 2 Specific provisions applicable to portfolio management companies

Article L. 533-21. – Portfolio management companies are prohibited from receiving funds, securities or gold from their clients.

*Replaced by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

Article L. 533-22. – Portfolio management companies shall exercise the rights attached to the securities held by the undertakings for collective investment in transferable securities which they manage, in the exclusive interest of the shareholders or the unitholders of said undertakings for collective investment

in transferable securities, and shall report on their practices with regard to the exercise of the voting rights as determined in the General Regulation of the Autorité des Marchés Financiers. In particular, where they do not exercise said voting rights, they shall explain their reasons to the unitholders or the shareholders of the undertakings for collective investment in transferable securities.

*Replaced by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007 and par rectification of 19 May 2007*

## Section 6 Investors' guarantee

Article L. 533-23. – Investment service providers and the individuals and legal entities referred to in Article L. 421-17 shall be required to inform the investors, before entering into a business relationship with them, of the existence of a guarantee scheme applicable to the transaction(s) envisaged, of the amount and scope of the cover offered and, where applicable, of the identity of the guarantee fund.

The investors' guarantee scheme is described in Articles L. 322-1 to L. 322-10.

*Replaced by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

## Section 7 Publication of the transactions carried out by investment service providers

Article L. 533-24. – Investment service providers which carry out transactions relating to shares admitted to trading on a regulated market, either for their account, or on behalf of third parties, outside a regulated market or a multilateral trading facility, shall publish details of the volume, the price and the time of such transactions.

The General Regulation of the Autorité des Marchés Financiers sets forth the implementing provisions of this article. It may also determine the conditions applicable to publication of the transactions in other categories of financial instruments admitted to trading on a regulated market.

*Replaced by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

# PART IV OTHER SERVICE PROVIDERS

*(Part LSF 2003-706 Art. 41)*

Article L. 540. –

*Became Article L. 543-1 through Act No. 2003-706 of 1 August 2003 Art. 41 and was then repealed by said Act Art. 68 IV Official Journal of 2 August 2003*

## Chapter I Financial investment advisors

*(Part LSF 2003-706 Art. 55)*

### Section 1 Definition and obligation to register

*Section inserted by Act No. 2010-1249 of 23 October 2010 Art. 36 Official Journal of 23 October 2010*

Article L. 541-1. – I. – Financial investment advisors are individuals and legal entities who/which provide the following services in the normal course of their business:

1 The investment advice referred to in paragraph 5 of Article L. 321-1;

3 The advice relating to the provision of investment services referred to in L. 321-1;

4 The advice relating to execution of the transactions in miscellaneous property described in Article L. 550-1.

II. – Financial investment advisors may also receive and transmit orders on behalf of third parties under the conditions and within the limits determined in the General Regulation of the Autorité des Marchés Financiers, and may engage in other asset-management-related consultancy activities.

III- The following shall not be subject to the provisions of this chapter:

1 The credit institutions and entities referred to in Article L. 518-1, investment firms and insurance companies;

2 The entities referred to in Article L. 531-2(2, g);

III. – Financial investment advisors may give legal advice or draft private deeds for others on a regular basis and in return for payment only in the circumstances and within the limits indicated in Articles 54, 55 and 60 of Act No. 71-1130 of 31 December 1971 reforming certain judicial and legal professions.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 55 Official Journal of 2 August 2003*

*Replaced by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

*Amended by Order No. 2007-1490 of 18 October 2007 Art. 4 Official Journal of 19 October 2007*

*Amended by Act No. 2010-1249 of 23 October 2010 Art. 36 Official Journal of 23 October 2010 (2 of 1 repealed)*

Article L. 541-1. – The financial investment advisors described in Article L. 541-1 shall be entered in the sole register referred to in Article L. 546-1.

*Inserted by Act No. 2010-1249 of 23 October 2010 Art. 36 Official Journal of 23 October 2010*

### Section 2 Other conditions of access and of practice

*Section inserted by Act No. 2010-1249 of 23 October 2010 Art. 36 Official Journal of 23 October 2010*

Article L. 541-2. - Individuals who are financial investment advisors, and individuals empowered to manage or administer legal entities authorised to act as financial investment advisors, must meet conditions relating to age and respectability determined by decree, as well as the conditions of professional

competence set forth in the General Regulation of the Autorité des Marchés Financiers.

Financial investment advisors must be habitually resident, or established, in France.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 55 Official Journal of 2 August 2003*

*Amended by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

*Amended by Act No. 2010-1249 of 23 October 2010 Art. 36 Official Journal of 23 October 2010*

Article L. 541-3. - Any financial investment advisor must be able to show, at all times, that an insurance policy is in force to cover it against the financial consequences of its professional civil liability in the event of a breach of its professional obligations as described in this chapter.

The minimum level of the cover which must be provided by the professional civil liability insurance shall be determined by decree, consistent with the legal form under which the advisory activity is carried out and the products and services likely to be proposed.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 55 Official Journal of 2 August 2003*

Article L. 541-4. - Any financial investment advisor must belong to an association that is responsible for the collective representation, and the defence of the rights and interests, of its members. Such associations shall be approved by the Autorité des Marchés Financiers on account, inter alia, of their representative status and their capacity to perform their duties. The conditions of competence and the conduct of business rules which their members are subject to must have been approved by the Autorité des Marchés Financiers.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 55 Official Journal of 2 August 2003*

*Amended by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

*Amended by Act No. 2010-1249 of 23 October 2010 Art. 36 Official Journal of 23 October 2010 (abrogation)*

"Article L. 541-5. - Any financial investment advisor which wishes to conduct its business in France must, after verifying that it meets the conditions set forth in Articles L. 541-2 to L. 541-4, be included in a list maintained and regularly updated by each professional association referred to in Article L. 541-4 as determined in a decree issued after consultation with the national commission for data protection and privacy (CNIL). Said list shall be sent to the Autorité des Marchés Financiers pursuant to the terms set forth in its General Regulation, where it may be freely consulted by the public.

The financial investment advisor shall be issued with a registration number by the professional association with which he/it is registered. Said number must be communicated to any individual or legal entity having dealings with him/it and must appear on all documents issued by a financial investment advisor.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 55 Official Journal of 2 August 2003*

*Repealed on the first day of the seventh month following the establishment of the register referred to in paragraph I of Article L. 546-1 of the Monetary and Financial Code by Act No. 2010-1249 of 23 October 2010 Art. 92 Official Journal of 23 October 2010)*

Article L. 541-6. – A financial investment advisor cannot receive financial instruments from its clients. It may receive from them only the funds which are remitted to pay for its services.

*Replaced by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

Article L. 541-7. – Financial investment advisors shall be subject to the incapacities referred to in Article L. 500-1.

*Replaced by Order No. 2005-429 amending the Monetary and Financial Code Art. 8 Official Journal of 7 May 2005*

Article L. 541-8. – Financial investment advisors cannot claim the benefit of the provisions of Articles L. 532-23 and L. 532-24.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

## Section 3 Conduct of business rules

*Section inserted by Act No. 2010-1249 of 23 October 2010 Art. 36 Official Journal of 23 October 2010*

Article L. 541-9. — Financial investment advisors shall be treated in the same way as investment [service] providers for the purposes of Article L. 533-13-1.

*Inserted by Order No. 2008-1271 of 5 December 2008 Art. 2 Official Journal of 6 December 2008*

**Article L. 541-8-1. – Financial investment advisors must:**

**1 Act honestly and fairly in the best interests of their clients;**

**2 Conduct their business, within the limits permitted by their company constitutional documents, with the requisite skill, care and diligence in the best interests of their clients, so as to offer them a suitable range of services consistent with their needs and objectives;**

**3 Have the resources and procedures required to run their business and apply said resources and procedures with due regard for efficiency;**

**4 Make inquiries of their clients, or of their potential clients, before offering any advice referred to in paragraph I of Article L. 541-1, concerning their knowledge of, and experience in, investment matters, as well as their financial situation and their investment objectives, so as to be able to recommend to them transactions, instruments and services which are appropriate to their situation. Where the clients, or the potential clients, fail to provide the information requested, the financial investment advisors shall refrain from recommending the operations, instruments and services in question;**

**5 Convey to the clients, in an appropriate manner, the legal nature and scope of any relations maintained with the institutions offering products referred to in paragraph 1 of Article L. 341-3 and the information that said clients need in order to make a decision, as well as information concerning the terms of their own compensation, including the pricing of their services.**

Said conduct of business rules are set forth in the General Regulation of the Autorité des Marchés Financiers.

The conduct of business rules referred to in Article L. 541-4 must observe said directions and may elucidate and supplement them.

*Inserted by Act No. 2010-1249 of 23 October 2010 Art. 36 Official Journal of 23 October 2010*

## Chapter II Intermediaries and entities authorised to act as administrators or custodians of financial instruments

*(Part LSF 2003-706 Art. 41, amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 72 Official Journal of 7 May 2005) and Amended by Act No. 2009-526 of 12 May 2009 Art. 138 Official Journal of 13 May 2009*

Article L. 542-1. – Only the following may engage in position-keeping of financial instruments:

1 Legal entities in respect of the financial instruments they issue through public offers;

2 Credit institutions established in France;

3 Investment firms established in France;

4 Legal entities whose members or partners are indefinitely and jointly liable for their debts and commitments, provided that said members or partners are institutions or firms referred to in paragraphs 2 and 3 which are authorised to provide administration or custody for financial instruments;

5 Legal entities established in France having as their primary or sole object the custody or administration of financial instruments, as well as those having as their sole object the administration of one or more collective occupational pension institutions;

6 The institutions referred to in Article L. 518-1;

7 As provided for in the General Regulation of the Autorité des Marchés Financiers, credit institutions, investment firms and legal entities having as their primary or sole object the custody or administration of financial instruments which are not established in France.

The legal entities referred to in paragraph 1 shall be subject, with regard to their financial instrument custody or administration activities, to the supervision and the sanctions of the Autorité des Marchés Financiers. The legal entities referred to in subparagraphs 2, 3, 4 and 5 shall be subject, with regard to their financial instrument custody or administration activities, to the laws and regulations, the rules of supervision and the sanctions for investment service providers set forth in this code. The legal entities referred to in subparagraphs 2 and 3 shall be subject, with regard to their financial instrument custody or administration activities, to an approval issued in connection with their approval. The legal entities referred to in subparagraph 5 shall be subject to the rules of approval for investment firms set forth in this code.

The legal entities referred to in paragraph 7 must be subject in their State of origin to rules governing the custody or administration of financial instruments and supervision equivalent to those applied in France. The Autorité des Marchés Financiers shall exercise in relation to such legal entities the powers of supervision and sanction stipulated for investment service providers in this code, taking the supervision carried out by the competent authorities of each State into account.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 41 II, III Official Journal of 2 August 2003*

*Amended by Order No. 2004-482 of 3 June 2004 Art. 5 Official Journal of 5 June 2004*

*Amended by Order No. 2006-344 of 23 March 2006 Art. 10 Official Journal of 24 March 2006*

*Amended by Act No. 2006-1770 of 30 December 2006 Art. 64 IV Official Journal of 31 December 2006*



*Amended by Order No. 2009-15 of 8 January 2009 Art. 4 Official Journal of 9 January 2009*

*Amended by Act No. 2009-526 of 12 May 2009 Art. 138 Official Journal of 13 May 2009*

## Chapter III Companies that manage collective investment undertakings

*(Part LSF 2003-706 Art. 41 and amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 73 Official Journal of 7 May 2005)*

Article L. 543-1. The companies that manage collective investment undertakings are the portfolio management companies, the UCITS management companies, the securitisation fund management companies, the management companies of real-estate investment companies, and the management companies of forestry investment companies.

*Repealed by Act No. 2003-706 of 1 August 2003 Art. 68 I c Official Journal of 2 August 2003*

*Inserted by Order No. 2005-429 amending the Monetary and Financial Code Art. 73 Official Journal of 7 May 2005 (formerly II of Article L. 214-1 relocated)*

## Chapter IV Investment research, financial analysis or credit rating services

*Part replaced by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 10 Official Journal of 23 October 2010*

### Section 1 Investment research and financial analysis services

*Inserted by Act No. 2010-1249 of 22 October 2010 Art. 10 Official Journal of 23 October 2010*

Article L. 544-1. – Within the meaning of **this section** and of Article L. 321-2(4), “investment research” or “financial analysis” shall mean research work or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or more financial instruments or issuers of financial instruments, including opinions given on the price or the present or future value of said instruments, that is intended for the distribution channels or the public and in respect of which the following conditions are met:

1 Said work or information shall be designated or described by the term: “investment research” or “financial analysis”, or shall be otherwise presented as an objective and independent explanation of the content of the recommendation;

2 It is not comparable to the provision of investment advice;

3 It shall be carried out pursuant to the provisions of the General Regulation of the Autorité des Marchés Financiers.

*Replaced by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 10 Official Journal of 23 October 2010*

Article L. 544-2. – The senior managers of a firm must refrain from having any dealings with financial analysts whose services they pay for which would have the object or effect of favouring their own interests, or those of their shareholders, to the detriment of truthful information.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 42 Official Journal of 2 August 2003*

Article L. 544-3. – All documents drawn up in preparation for the publications circulated under the responsibility of an investment research department or of a rating agency must be retained for three years and kept available to the Autorité des Marchés Financiers for the purposes of its duties described in paragraph II of Article L. 621-9.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 42 Official Journal of 2 August 2003*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 10 Official Journal of 23 October 2010*

### Section 2 Credit rating services

*Inserted by Act No. 2010-1249 of 22 October 2010 Art. 10 Official Journal of 23 October 2010*

Article L. 544-4. – The Autorité des Marchés Financiers is the competent authority for the registration and supervision of the credit rating agencies within the meaning of Article 22 of Regulation (EC) No. 1060/2009 of the European Parliament and the Council, of 16 September 2009, on the credit rating agencies.

Each year, the Autorité des Marchés Financiers publishes a report on the role of the rating agencies, their ethical rules, the transparency of their methods and the impact of their activities on the issuers and the financial markets.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 42 Official Journal of 2 August 2003*

*Replaced by Act No. 2010-1249 of 22 October 2010 Art. 10 Official Journal of 23 October 2010*

"Article L. 544-5. – The credit rating agencies referred to in Article L. 544-4 shall assume liability in tort and liability for negligence towards their clients, and towards third parties, for the prejudicial consequences of any wilful misconduct or negligence committed by them in discharging the obligations laid down in the aforementioned Regulation (EC) No. 1060/2009 of the European Parliament and the Council, of 16 September 2009.

Any agreement having the effect of submitting, in advance and exclusively, to the courts of a third-party State to the European Union a dispute relating to the provisions of the aforementioned Regulation (EC) No. 1060/2009 of the European Parliament and the Council, of 16 September 2009, which the French courts would have had jurisdiction to hear in the absence of such an agreement, shall be deemed null and void and unwritten.]

*Inserted by Act No. 2010-1249 of 22 October 2010 Art. 10 Official Journal of 23 October 2010 effective from 1 January 2011*

**Article L. 544-6.** – Any clause which seeks to exclude the liability of the credit rating agencies referred to in Article L. 544-4 shall be prohibited and deemed underwritten.

*Inserted by Act No. 2010-1249 of 22 October 2010 Art. 10 Official Journal of 23 October 2010 effective from 1 January 2011*

## Chapter V Tied agents

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

**Article L. 545-1.** – An investment service provider may avail itself of the services of tied agents within the meaning of paragraph 1 of Article 4 of Directive 2004/39/EC of 21 April 2004 to provide the following investment services for which it is approved:

1. Receipt and transmission of orders on behalf of third parties;
2. Guaranteed or non-guaranteed investment;
3. Investment advice.

Tied agents may also undertake promotion of the services provided by the investment service provider, provide advice on such services and canvass clients on its behalf as provided for in Chapter I of Part IV of Book III.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007 and Amended by rectification of 19 May 2007*

**Article L. 545-2.** – Any tied agent shall act by virtue of a power of attorney given by a single investment service provider.

The investment service provider shall remain fully and unconditionally liable towards third parties for the acts carried out in its name and on its behalf by its tied agents and also for their omissions.

Any tied agent shall inform the clients or potential clients of its status and of the identity of its principal upon entering into contact with them.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007 and Amended by rectification of 19 May 2007*

**Article L. 545-3.** – A tied agent cannot receive either funds or financial instruments from its principal's clients.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

**Article L. 545-4.** – Investment service providers which avail themselves of the services of tied agents shall verify their respectability and their professional knowledge. They shall also supervise their activities in order to ensure that they comply at all times with the laws and regulations they themselves are subject to.

Said service providers shall also ensure that their tied agents comply at all times with the laws and regulations that apply to them.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

*Amended by Act No. 2010-1249 of 23 October 2010 Art. 36 Official Journal of 23 October 2010*

**Article L. 545-5. – I.** – The tied agents described in Article L. 545-1 shall be entered in the sole register referred to in Article L. 546-1.

**II.** Where an investment service provider approved in France uses a tied agent established in a host State which does not authorise the investment service providers approved there to use such agents, said tied agent shall also be entered in the register referred to in **referred to I** in such capacity.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

*Amended by Order No. 2008-698 of 11 July 2008 Art. 1 Official Journal of 16 July 2008*

*Amended by Act No. 2010-1249 of 23 October 2010 Art. 36 Official Journal of 23 October 2010*

**Article L. 545-5-1.** – Investment service providers which use the services of tied agents must ensure that the latter are registered pursuant to Article L. 545-5.

*Inserted by Act No. 2010-1249 of 23 October 2010 Art. 36 Official Journal of 23 October 2010*

**Article L. 545-6.** – Any investment service provider which uses a tied agent shall take adequate measures to prevent said agent's activities that come within the scope of this chapter from having a negative effect on the activities that same agent carries out on behalf of said service provider.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

**Article L. 545-7.** – The General Regulation of the Autorité des Marchés Financiers sets forth, where necessary, the implementing provisions of this chapter.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 4 Official Journal of 13 April 2007*

## Chapter VI Sole registration

*Inserted by Act No. 2010-1249 of 23 October 2010 Art. 36 Official Journal of 23 October 2010*

**Article L. 546-1. – I.** – The intermediaries in banking transactions and in payment services described in Article L. 519-1, the financial investment advisors described in Article L. 541-1 and the tied agents described in Article L. 545-1 shall be entered in the sole register referred to in Article L. 512-1 of the Insurance Code.

A decree issued following consultation with the Conseil d'Etat sets forth said register's registration requirements and determines the information that must be made public. It also determines the procedures for its maintenance by the entity referred to in Article L. 512-1.

Registration, which is renewable annually, is contingent upon prior payment, to the entity referred to in the second paragraph, of annual registration fees determined by order of the Minister for the Economy, subject to a limit of €250.

Said registration fees shall be recovered by the entity referred to in the second paragraph, which is subject to the general economic and financial supervision of the State. Payment thereof shall become effective upon presentation of the application for registration or the application for renewal.

Where the application for registration or for renewal is presented without the relevant payment, the entity referred to in the second paragraph shall send the liable entity, by registered mail with confirmation of receipt, a letter informing it that if payment is not received within thirty days of the receipt of said letter the application for registration shall not be dealt with. In the case of an application for renewal, the letter shall indicate that non-payment shall entail deregistration.

**II.** – This article shall not apply to the employees of an entity referred to in the first paragraph of Article I.

*Inserted by Act No. 2010-1249 of 23 October 2010 Art. 36 Official Journal of 23 October 2010*

Article L. 546-2. – I. – At the time of their registration or of its renewal, the entities referred to in paragraph I of Article L. 546-1 shall be required to send the entity responsible for maintaining the register any information required to verify the conditions relating to access to, and exercise of, their profession. They shall also be required to inform said entity as soon as possible where they no longer meet said conditions.

II. – Failure to comply with the conditions relating to access to, and exercise of, said profession shall entail their deregistration without consultation from the sole register referred to in Article L. 546-1. Said entity shall make the deregistration pronounced public.

*Inserted by Act No. 2010-1249 of 23 October 2010 Art. 36 Official Journal of 23 October 2010*

"Article L. 546-3. – Any entity other than an entity referred to in the first subparagraph of paragraph I of Article L. 546-1 is prohibited from using a trade name, corporate name, advertising or, more generally, any wording, which might imply, or give the impression that, it is registered under such a category in the register referred to in Article L. 546-1 or which could create confusion in that regard.

It is prohibited for an entity registered in the register referred to in Article L. 546-1 to give the impression that it has been registered in a category other than that in which it belongs or to create confusion in that regard.]

*Inserted by Act No. 2010-1249 of 23 October 2010 Art. 36 Official Journal of 23 October 2010 Articles L. 546-3, L. 546-5 and L. 546-6 of said code shall enter into force one year after the date of establishment of the register referred to in paragraph I of Article L. 546-1 of said code (see Art. 92 of the Act)*

"Article L. 546-4. – I. – Violations of the provisions of this chapter, with the exception of Article L. 546-3, shall be punished with a term of imprisonment of two years and a fine of €6,000 or with just one of said penalties. The fact of any individual violating a prohibition laid down in Article L. 546-3 shall incur a penalty of three years' imprisonment and a fine of €375 000 or just one of said penalties. The court may order the posting or publication of the decision handed down, as provided for in Article 131-35 of the Criminal Code.

II. – Where the Autorité des Marchés Financiers or the Autorité de Contrôle Prudentiel has knowledge of an offence committed by an individual or a legal entity referred to in paragraph I of Article L. 546-1 which is likely to lead to the deregistration referred to in said article, or where the Autorité des Marchés Financiers or the Autorité de Contrôle Prudentiel exercises its power to impose penalties pursuant, respectively, to Article L. 621-15 or paragraph I of Article L. 612-41, it shall duly inform the institution responsible for the maintenance of said register.

III. – The entity responsible for the maintenance of the register referred to in paragraph I of Article L. 546-1 shall provide any information requested of it by the Autorité des Marchés Financiers or the Autorité de Contrôle Prudentiel in the performance of their duties.

IV. – The entity referred to in paragraph I of Article L. 546-1 shall, on its own initiative, also provide any other relevant information to the Autorité des Marchés Financiers or the Autorité de Contrôle Prudentiel.]

*Inserted by Act No. 2010-1249 of 23 October 2010 Art. 36 Official Journal of 23 October 2010 Articles L. 546-3, L. 546-5 and L. 546-6 of said code enter into force one year after the date of establishment of*

*the register referred to in paragraph I of Article L. 546-1 of said code (see Art. 92 of the Act)(a mistake crept in during the drafting of the Act. L. 546-4 should be read instead of L. 546-5 and L. 546-6)*

## PART V INTERMEDIARIES IN MISCELLANEOUS PROPERTY

Article L. 550-1. - The following are subject to the provisions of Articles L. 550-2, L. 550-3, L. 550-4, L. 550-5 and L. 573-8:

1. Whoever, directly or indirectly, by means of advertising or direct marketing, regularly invites third parties to subscribe to life annuities or to acquire title to movable or immovable property where the acquirers do not perform the management thereof themselves or where the contract offers a buy-back or exchange option with revaluation of the capital invested;

2. Whoever collects funds to that end;

3. Any individual or legal entity responsible for the management of such property.

Said articles shall not apply to activities already governed by specific provisions such as insurance and capitalisation transactions governed by the Insurance Code, deferred credit transactions, transactions governed by the Mutual Insurance Code and the Social Security Code, or transactions normally giving entitlement to attribution of ownership or enjoyment of specific parts of one or more buildings.

The entities referred to in this article shall be subject to the provisions of Articles L. 341-1 to L. 341-17 and L.353-1 to L. 353-5 if they resort to direct marketing.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 54 I 3 Official Journal of 2 August 2003*

Article L. 550-2. - Only joint-stock companies may, in connection with the transactions referred to in Article L. 550-1, receive the sums corresponding to the acquirers' subscriptions or the payment of their investment income. Said companies must prove, before any advertising or direct marketing takes place, that their fully paid-up capital is at least equal to the amount imposed by Article L. 224-2 of the Commercial Code.

*Amended by Order No. 2009-80 of 22 January 2009 Art. 5 Official Journal of 23 January 2009*

Article L. 550-3. - Before any advertising or direct marketing takes place, a document intended to provide all relevant information to the public on the proposed operation, on the entity which took the initiative and on the management company must be drawn up as determined by decree.

Where the investor has not received the information document prior to execution of the contract, or where the terms of the contract are inconsistent with the content of the information document, the court may grant him compensation or declare the contract cancelled.

Draft information documents and draft model contracts shall be submitted to the Autorité des Marchés Financiers, which, as provided for in this code, exercises supervision over all the firms participating in the operation and determines whether they offer the minimum guarantees required for an investment intended for the public.

The Autorité des Marchés Financiers may limit or clarify the conditions applicable to the advertising to take account of the nature of the products and the guarantees offered.

It shall have a period of thirty days with effect from submission, which it may extend to sixty days by a reasoned decision, in which to make its observations. Advertising or direct marketing cannot commence until the observations of the Autorité des Marchés Financiers have been complied with or, where there are no observations, until the aforementioned period has expired. A copy of the documents circulated shall be submitted to the Autorité des Marchés Financiers.

Whoever proposes to substitute himself/itself for the manager of the property or for the individual/entity required to fulfil the commitments referred to in paragraph 1 of Article L. 550-1 must submit a draft information document and a draft model contract to the Autorité des Marchés Financiers, which shall exercise supervision as provided for in the third paragraph above.

In the event of there being a change in the circumstances in which the management of the property or the fulfilment of the commitments is performed, the right holders' consent to the change shall be validly given only when they have been expressly informed of the proposed change, the scope thereof and the reasons therefor in a document submitted to the Autorité des Marchés Financiers. The latter may request that said document be brought into compliance with its observations.

Where the Autorité des Marchés Financiers finds that the operation proposed to the public is no longer consistent with the content of the information document and the model contract, or no longer offers the guarantees provided for in this article, it may, through a reasoned decision, order the cessation of all direct marketing or advertising pertaining to the operation.

*Amended by LSF 2003-706 Art. 46 V 1*

Article L. 550-4. - At the close of each financial year, the management company shall draw up, as well as its own accounts, an inventory of the property it manages and a statement of the sums received on behalf of the right holders during the financial year. It shall also draw up a report on its business and the management of the property.

It shall draw up a balance sheet, a profit and loss account and an appendix. The accounts shall be audited by a statutory auditor who shall certify the true and fair nature thereof.

The documents referred to in the first two paragraphs shall be sent to the right holders and to the Autorité des Marchés Financiers within three months of the close of the financial year.

*Amended by LSF 2003-706 Art. 46 V 1*

Article L. 550-5. - The statutory auditor shall be appointed for six financial years, at the request of the management company, through a court decision handed down after consultation with the Autorité des Marchés Financiers. In the event of misconduct or impediment, the statutory auditor may be relieved of his duties by a court decision at the request of the management company or of any right holder.

*Amended by LSF 2003-706 Art. 46 V 1 and Art. 116*

*Amended by Order No. 2005-1126 of 8 September 2005 Art. 21 Official Journal of 9 September 2005*

## **PART VI OBLIGATIONS RELATING TO THE PREVENTION OF MONEY LAUNDERING, TERRORIST FINANCING AND ILLICIT LOTTERIES, GAMES OF CHANCE AND BETTING**

*Part Amended by Act No. 2007-297 of 5 March 2007 Official Journal of 7 March 2007*

### **Chapter I Obligations relating to the prevention of money laundering and of terrorist financing**

*Part Amended by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

#### **Section 1 Individuals and legal entities subject to an obligation to make a report to the Public Prosecutor**

*Section inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

Article L. 561-1. - Individuals and legal entities other than those referred to in Article L. 561-2 who, in the normal course of their business, execute, supervise or recommend transactions giving rise to capital movements, shall be required to declare to the Public Prosecutor any transactions they have knowledge of that involve sums which they know to be the proceeds of an offence referred to in Article L. 562-15.

Where they have made such a report in good faith, said individuals and legal entities shall benefit from the provisions of Article L. 561-22.

The provisions of Article L. 574-1 shall apply to them if they inform the owner of said sums or the originator of said transactions of the existence of said report or disclose information on the likely consequences of their actions.

The Public Prosecutor shall inform the unit referred to in Article L. 561-23, which shall provide him with all relevant information.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

#### **Section 2 Individuals and legal entities subject to the obligations relating to the prevention of money laundering and of terrorist financing**

*Section inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

Article L. 561-2. - The following are subject to the obligations laid down in sections 2 to 7 of this chapter:

1. The entities, institutions and units governed by the provisions of Part I of this Book;

1 bis The payment institutions governed by the provisions of Chapter II of Part II of this book;



2 The firms referred to in Article L. 310-1 of the Insurance Code and insurance intermediaries, save for those who act under the insurance company's sole liability;

3 The institutions or unions governed by Part III of Book IX of the Social Security Code or covered by paragraph II of Article L. 727-2 of the Rural Code;

4 The mutual societies and unions that carry out transactions referred to in paragraph I, 1 of Article L. 111-1 of the Mutuality Code and the mutual societies and unions that manage settlements and contracts for said mutual societies and unions;

5 The Banque de France, the issuing institution of the overseas *départements* referred to in Article L. 711-2 of this code and the overseas issuing institution referred to in Article L. 712-4 hereof;

6 The investment firms other than portfolio management companies, the entities referred to in Article L. 440-2, the market undertakings referred to in Article L. 421-2, the central custodians and managers of systems used for settlement and delivery of financial instruments, the financial investment advisors and authorised intermediaries referred to in L. 211-4, the portfolio management companies in respect of the investment services referred to in L. 321-1, and the portfolio management companies and management companies in respect of the marketing of the units or shares of collective investment undertakings, regardless of whether they manage them;

7 Money-changers

8 The entities engaged in the activities referred to in subparagraphs 1, 2, 4, 5 and 8 of Article 1 of Act No. 70-9 of 2 January 1970 regulating the conditions of practice of the activities pertaining to certain transactions in real-estate and goodwill, excluding exchanges, letting or sub-letting, seasonal or otherwise, whether unfurnished or furnished;

9 The legal representatives and managers responsible for the gaming or betting operators authorised on the basis of Article 5 of the Act of 2 June 1891 relating to the regulation of the authorisation and functioning of horse racing, of Article 1 of the Act of 15 June 1907 relating to casinos, of Article 47 of the Act of 30 June 1923 which determined the general budget for the financial year 1923, of Article 9 of the Act of 28 December 1931, of Article 136 of the Act of 31 May 1933 which determined the general budget for the financial year 1933 and of Article 42 of the Budget Act for 1985 (No. 84-1208 of 29 December 1984);

9 bis The legal representatives and managers responsible for the gaming or betting operators authorised on the basis of Article 21 of Act No. 2010-476 of 12 May 2010 relating to the opening up to competition and the regulation of the online gambling and games of chance sector;

10. Entities which regularly engage in trading in, or organising the sale of, gems, precious materials, antiques and works of art;

11 Firms entitled to the exemption provided for in paragraph II of Article L. 511-7 and the firms referred to in paragraph I of Article L. 521-3;

12 Accountants, employees authorised to practice the profession of Accountant pursuant to Articles 83 ter and 83 quater of Order No. 45-2138 of 19 September 1945 instituting the Order of Accountants and regulating the title and the profession of Accountant as well as those of the statutory auditor;

13 The *avocats* of the Conseil d'Etat and of the court of cassation, the *avocats* and the counsels of the courts of appeal, the notaries, the bailiffs, the court-appointed administrators, the court-appointed receivers, and the court-appointed auctioneers and valuers, as provided for in Article L. 561-3;

14 Firms carrying out voluntary sales of furniture at public auctions;

15 Entities engaged in the domiciliation activity referred to in Articles L. 123-11-2 et seq of the Commercial Code.

16 Sports agents.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 14 Official Journal of 16 July 2009*

*Amended by Act No. 2010-476 of 12 May 2010 Art. 22 Official Journal of 13 May 2010*

*Amended by Act No. 2010-626 of 9 June 2010 Art. 2 Official Journal of 10 June 2010*

*Amended by Order No. 2010-737 of 1 July 2010 Art. 30 Official Journal of 2 July 2010*

Article L. 561-2-1. - For the purposes of this chapter, a business relationship shall be created when an individual or legal entity referred to in Article L. 561-2 enters into a professional or commercial relationship which is intended, at the time when the contact is established, to be of a certain duration. The business relationship may be set forth in a contract under the terms of which several successive transactions shall be carried out between the contracting parties or which places continuous obligations on them. A business relationship shall also be created where, in the absence of such a contract, a client has the benefit of regular assistance from an aforementioned individual or legal entity to carry out several transactions or a single transaction of a continuous nature or, in the case of the individuals referred to in paragraph 12 of Article L. 561-2, to carry out a legal assignment.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

Article L. 561-2-2. – For the purposes of this chapter, the effective beneficiary shall be the individual who, directly or indirectly, controls the client, or the individual for whom a transaction is executed or an activity is carried out.

A decree issued following consultation with the Conseil d'Etat elucidates the definition of the effective beneficiary owner for the different categories of legal entities.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

**Article L. 561-3.** - I. — The individuals referred to in paragraph 13 of Article L. 561-2 shall be subject to the provisions of this chapter where, in the context of their business activity:

1 They participate for and on behalf of their client in any financial or real-estate transaction or act as a fiduciary;

2 They assist their client in the preparation or execution of transactions relating to:

a) The buying and selling of real-estate or goodwill;

b) The management of funds, securities or other assets belonging to the client;

c) The opening of current accounts, savings accounts or securities accounts or insurance contracts;

4. Organisation of the contributions required to create companies;

5. The formation, administration or management of companies;

f) The formation, administration or management of trusts governed by Articles 2011 to 2031 of the Civil Code or by a foreign legal system, or of any other similar structure;

g) The formation or administration of endowment funds.

II. — The avocats of the Conseil d'Etat and of the court of cassation, the avocats and the counsel of the courts of appeal, in carrying out an activity relating to the transactions referred to in paragraph I, shall not be subject to the provisions of this chapter where the activity relates to jurisdictional proceedings, where the information they have received or obtained before, during or after said proceedings, including any advice given with regard to the manner of initiating or avoiding such proceedings, nor where they give legal advice, unless said information was provided for the purpose of money laundering or terrorist financing or with the knowledge that the client requested it for the purpose of money laundering or terrorist financing.

III. — The other individuals referred to in paragraph 13 of Article L. 561-2, in carrying out an activity relating to the transactions referred to in paragraph I, shall not be subject to the provisions of section 4 of this chapter where they give legal advice, unless said information was provided for the purpose of money laundering or terrorist financing or with the knowledge that the client requested it for the purpose of money laundering or terrorist financing.

IV. — Accountants, as well as employees authorised to practice the profession of Accountant pursuant Articles 83 ter and 83 quater of Order No. 45-2138 of 19 September 1945 which instituted the Order of Accountants and regulates the title and profession of accountant shall not be subject to section 4 of this chapter where they give legal advice, unless said information was provided for the purpose of money laundering or terrorist financing or with the knowledge that the client requested it for the purpose of money laundering or terrorist financing.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

*Amended by Order No. 2010-853 of 23 July 2010 Art. 23 Official Journal of 24 July 2010*

Article L. 561-4. - Individuals or legal entities who/which carry out a secondary financial activity, directly linked to their principal activity, that comes within a category referred to in paragraphs 1 to 7 of Article L. 561-2 and carries little risk of money laundering or terrorist financing shall be exempted from the obligations of this chapter.

A decree issued following consultation with the Conseil d'Etat defines the financial activities on the basis of their type, their volume and the amount of the transactions.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

### Section 3 Obligation of due diligence with regard to the clients

*Section inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

Article L. 561-5. - I. — Before entering into a business relationship with their client or assisting said client with the preparation or execution of a transaction, the entities referred to in Article L. 561-2 shall identify their client and, where applicable, the effective beneficiary of the business relationship, by means of appropriate methods and shall verify said indemnificatory elements upon presentation of any probative written document.

The shall identify their occasional clients in the same way and, where applicable, the effective beneficiary of the business relationship, where they suspect that the transaction could relate to money laundering or to terrorist financing or, in the manner stipulated in a decree issued following consultation with the Conseil d'Etat, where the transactions are of a certain kind or exceed a certain amount.

II. — As an exception to paragraph I, where the risk of money laundering or of terrorist financing appears to be low, and pursuant to conditions set forth in a decree issued following consultation with the Conseil d'Etat, the identity of the client and, where applicable, that of the effective beneficiary, may be verified, but only while the business relationship is in the process of being established.

III. — The entities referred to in paragraph 9 of Article 561-2 shall meet said obligation by applying the measures stipulated in Article 561-13.

IV. — The implementing provisions of paragraphs I and II of this article are stipulated in a decree issued following consultation with the Conseil d'Etat.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

Article L. 561-6. - Before entering into a business relationship with a client, the entities referred to in Article L. 561-2 shall gather the information relating to the object and nature of said relationship and any other piece of relevant information.

Throughout its entire duration, and as stipulated in a decree issued following consultation with the Conseil d'Etat, said entities shall, within the scope of their rights and obligations, apply constant due diligence to the business relationship and carry out a thorough examination of the transactions executed, taking care to ensure that they are consistent with the latest information they have concerning their client.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

Article L. 561-7. - I. — For the entities referred to in paragraphs 1 to 6 of Article L. 561-2, the obligations laid down in the first paragraph of Articles L. 561-5 and L. 561-6 may be implemented by a third party where:

a) The third party is an entity referred to in paragraphs 1 to 6 or 12 or 13 of Article L. 561-2 located, or having its registered office, in France or an entity belonging to an equivalent category under a foreign legal system located in another Member State of the European Union or in a third country which imposes equivalent obligations with regard to the prevention of money laundering and terrorist financing and appears on the list referred to in Article L. 561-9(II, 2);

b) The entity concerned shall have access to the information gathered by the third party as determined in a decree issued following consultation with the Conseil d'Etat.

Where the entity concerned relies on the steps taken by a third party, it shall remain liable for meeting its obligations.

II. — The entities referred to in paragraphs 1 to 6 of Article L. 561-2 may send the information gathered for the implementation of the first paragraph of Articles L. 561-5 and L. 561-6 to another entity referred to in paragraphs 1 to 6 of Article L. 561-2 located, or having its registered office, in France. They may also send such information to an institution proposing financial activities equivalent to those carried out by the entities referred to in paragraphs 1 to 6 of Article L. 561-2, where:

a) The recipient third party is located in another Member State of the European Union or in a third country which imposes equivalent obligations with regard to the prevention of money laundering and terrorist financing, the list of which is referred to in Article L. 561-9 2(II, 2);

b) The treatment of information of a personal nature by the recipient third party ensures an adequate level of protection for the private life and the fundamental freedoms and rights of persons pursuant to Articles 68 and 69 of Act No. 78-17 of 6 January 1978 on data processing, files and individual liberties.

For the purposes of this article, the entities referred to in paragraphs 1 to 6 of Article L. 561-2 shall, with the exception of those referred to in paragraph 1 bis of said Article, be the entities which, for the most part, provide the service referred to in of Article L. 314-1(II, 6).

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 14 Official Journal of 16 July 2009*

*Amended by Order No. 2010-853 of 23 July 2010 Art. 23 Official Journal of 24 July 2010*

Article L. 561-8. - Where an entity referred to in Article L. 561-2 is unable to identify its client or to obtain information on the object and nature of the business relationship, it shall not execute any transaction, regardless of the particulars, and shall not establish or pursue any business relationship. Where it has been unable to identify its client or to obtain information on the object and nature of the business relationship and the relationship has nevertheless been established pursuant to Article L. 561-5, it shall terminate it.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

Article L. 561-9. - I. — Where they deem the risk of money laundering and of terrorist financing to be low, the entities referred to in Article L. 561-2 may reduce the intensity of the measures provided for in Article L. 561-6. In such cases, they shall prove to the supervisory authority referred to in Article L. 561-36 that the scope of the measures is commensurate with said risks.

II. — The entities referred to in Article L. 561-2 shall not be subject to the obligations referred to in Articles L. 561-5 and L. 561-6, provided that there is no suspicion of money laundering or terrorist financing, in the following cases:

1 For clients or products that present a low risk of money laundering or terrorist financing, the list of which is determined in a decree issued following consultation with the Conseil d'Etat;

2 Where the client is an entity referred to in paragraphs 1 to 6 of Article L. 561-2, established or having its registered office in France, in another Member State of the European Union or in a third country which imposes equivalent obligations with regard to the prevention of money laundering and terrorist financing. The list of said countries shall be determined by the Minister for the Economy.

The entities referred to in Article L. 561-2 shall gather sufficient information on their client for the purpose of verifying that he/it meets the conditions set forth in the two previous paragraphs.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

Article L. 561-10. - The entities referred to in Article L. 561-2 shall apply additional due diligence measures with regard to their client, over and above those referred to in Articles L. 561-5 and L. 561-6, where:

1 The client or his/its legal representative is not physically present for the purposes of identification;

2 The client is an individual residing in another Member State of the European Union or in a third country who is exposed to particular risks on account of the political, jurisdictional or administrative functions he performs or has performed on behalf of another State or of those that direct members of his family or individuals known to be closely associated with him perform or have performed;

3 The product or the transaction would tend to maintain his/its anonymity;

4 The transaction is a transaction for their account or on behalf of third parties entered into with individuals or legal entities, including their subsidiaries or branches, domiciled, registered or established in a State or a territory referred to in paragraph VI of Article L. 561-15.

A decree issued following consultation with the Conseil d'Etat determines the categories of the entities referred to in paragraph 2, a list of the products and transactions referred to in paragraph 3, and the additional due diligence measures.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

Article L. 561-10-1. - Where an entity referred to in paragraphs 1 or 5 of Article L. 561-2 or an investment firm other than a portfolio management company maintains with a financial institution located in a country which is not a member of the European Union or party to the European Economic Area Agreement or which does not appear on the list referred to in Article L. 561-9 (II, 2) of the third countries which impose equivalent obligations with regard to the prevention of money laundering and terrorist financing, a cross-border relationship as a banking correspondent or a relationship entailing the distribution of financial instruments referred to in L. 211-1, the French entity concerned shall apply to the foreign financial institution with which it maintains a relationship, in addition to the measures referred to in Articles L. 561-5 and L. 561-6, enhanced due diligence measures as determined in a decree issued following consultation with the Conseil d'Etat.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

*Amended by Order No. 2010-853 of 23 July 2010 Art. 23 Official Journal of 24 July 2010*

Article L. 561-10-2. - I. — Where they deem the risk of money laundering and of terrorist financing presented by a client, a product or a transaction to be high, the entities referred to in Article L. 561-2 shall increase the intensity of the measures referred to in Articles L. 561-5 and L. 561-6.

II. — The entities referred to in Article L. 561-2 shall carry out a more thorough examination of any transaction which is particularly complex or is of an unusually high amount or which does not appear to have any economic justification or lawful object. In such cases, said entities shall make inquiries of the client as to the origin of the funds and the use of such sums as well as the object of the transaction and the identity of the beneficiary.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

Article L. 561-10-3. - The entities referred to in paragraphs 1 and 5 of Article L. 561-2 shall be prohibited from entering into a relationship as a banking correspondent with a credit institution or an institution engaged in equivalent activities formed in a country where said institution has no effective physical presence which would enable management and administrative activities to be carried out, unless it is attached to a regulated institution or group.

The entities referred to in 1 and 5 of Article L. 561-2 shall take appropriate measures to ensure that they do not enter into or maintain a relationship as a correspondent with an entity which itself maintains banking correspondent relationships that allow an institution formed in the circumstances indicated in the previous paragraph to use its accounts.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

Article L. 561-11. - A decree issued following consultation with the Conseil d'Etat may, for reasons of public order, make some or all of the transactions executed by the entities referred to in paragraphs 1 to 7 of Article L. 561-2 established in France, for their account or on behalf of third parties, with individuals or legal entities, including their subsidiaries or branches, domiciled, registered or established in any of the States or territories referred to in paragraph VI of Article L. 561-15, subject to special conditions, restrictions or prohibitions.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

Article L. 561-12. - Without prejudice to any more restrictive provisions, the entities referred to in Article L. 562-2 shall retain the documents relating to the identity of their regular or occasional clients for five years with effect from the closure of their accounts or the cessation of their relations with them. They shall also, within the scope of their remit, retain for five years, with effect from their execution, the documents relating to the transactions carried out by them, as well as documents that record the details of the transactions referred to in paragraph II of Article L. 561-10-2.

The entities referred to in paragraph 9 of Article L. 561-2 shall meet said obligation by applying the measures stipulated in Article L. 561-13.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

*Amended by Order No. 2010-853 of 23 July 2010 Art. 23 Official Journal of 24 July 2010*

Article L. 561-13. - Once they have verified the identity of the gamblers upon presentation of a probative document, casinos shall be required to record their names and addresses where there is any exchange of means of payment, chips, tokens, or tickets of an amount above a threshold set by decree. Said information, which cannot be used for purposes other than those envisaged in this chapter, shall be entered in a specific register and must be retained for five years.

Organisations, clubs and societies which organise games of chance, lotteries, betting and sporting or racing tips shall be required to determine, through presentation of any probative document, the identity of any gamblers who win sums above an amount determined by decree and to record those gamblers' names and addresses, as well as the amount of the sums they have won. Said information must be retained for five years.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

Article L. 561-14. - The entities referred to in paragraphs 1 to 7 of Article L. 561-2 shall not hold any anonymous passbook accounts or other anonymous savings accounts.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

Article L. 561-14-1. - The provisions of Article L. 561-5 shall apply to the bonds and other securities referred to in Article 990 A of the Code Général des Impôts.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

Article L. 561-14-2. - The provisions of the second paragraph of Article 537 of the Code Général des Impôts shall not impede the application of Article L. 561-5 of this code. However, the information referred to in said article shall be

recorded in a register separate from the register instituted by Article 537 of the Code Général des Impôts.

Where the client has not authorised the financial institution to communicate his identity and tax domicile to the tax authorities, the right to communication referred to in Articles L. 83, L. 85, L. 87 and L. 89 of the Book of Tax Procedures shall not apply to either the register instituted by this article or to the supporting documents referred to in the first paragraph of Article L. 561-5 drawn up in connection with the transactions involving bonds, securities and other assets referred to in Article 990 A and the second paragraph of Article 537 of the Code Général des Impôts.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

## Section 4 Obligation to make a report

*Section inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

Article L. 561-15. - I. — The entities referred to in Article L. 561-2 shall be required, under the conditions set forth in this chapter, to declare to the unit referred to in Article L. 561-23 the sums entered in their books or the transactions relating to sums which they know, suspect or have good reasons for suspecting are the proceeds of an offence punishable by a custodial sentence of more than one year or are destined for terrorist financing.

II. — As an exception to I, the entities referred to in Article L. 561-2 shall declare to the unit referred to in Article L. 561-23 the sums or transactions which they know, suspect or have good reasons for suspecting are the proceeds of a tax fraud, where at least one criterion defined by decree is present.

III. — Upon completion of the thorough examination stipulated in paragraph II of Article L. 561-10-2, the entities referred to in Article L. 561-2 shall, where applicable, make the report referred to in paragraph I of this article.

IV. — The entities referred to in Article L. 561-2 shall also be required to declare to the unit referred to in Article L. 561-23 any transaction in respect of which the identity of the principal or of the effective beneficiary or of the grantor of a fiduciary fund or of any other management instrument of a special-purpose trust remains dubious despite the steps taken pursuant to Article L. 561-5.

V. — Any information likely to invalidate, confirm or alter the elements contained in the report shall be drawn to the attention of the unit referred to in Article L. 561-23 without delay.

VI. — A decree may extend the obligation to make a report referred to in paragraph I to own account transactions or third-party transactions executed by the entities referred to in paragraphs 1 to 7 of Article L. 561-2 with individuals or legal entities, including their subsidiaries or branches, domiciled, registered or established in any State or territory in which the shortcomings of the legislation or of the practices obstruct the prevention of money laundering and terrorist financing. Said decree shall determine the minimum amount of the transactions that must be declared.

VII. — A decree issued following consultation with the Conseil d'Etat sets forth the particulars of said report.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

*Amended by Order No. 2010-853 of 23 July 2010 Art. 23 Official Journal of 24 July 2010*

Article L. 561-16. - The entities referred to in Article L. 561-2 shall refrain from executing any transaction which they suspect



may be linked to money laundering or to terrorist financing until such time as they have made the report referred to in Article L. 561-15. They may then processed with the transaction only if the conditions set forth in the fourth paragraph of Article L. 561-25 are met.

Where a transaction which should have been the subject of the report referred to in Article L. 561-15 has already been executed on account of it being impossible to defer its execution, or because its deferral could have obstructed investigations relating to a suspected money laundering or terrorist financing transaction, or because it did not appear to be subject to said report until after its execution, the entity referred to in Article L. 561-2 shall inform the unit referred to in Article L. 561-23 thereof without delay.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

Article L. 561-17. - As an exception to Articles L. 561-15 and L. 561-16, the avocat attached to the Conseil d'Etat and to the court of cassation, and the counsel of the court of appeal shall send their reports, as applicable, to the President of the Ordre des avocats of the Conseil d'Etat and of the court of cassation, to the President of the order which the avocat belongs to or to the President of the professional body which the counsel belongs to. As soon as the conditions set forth in Article L. 561-3 are met, said authorities shall send the report to the unit referred to in Article L. 561-23 within the timeframe and according to the terms set forth in a decree issued following consultation with the Conseil d'Etat.

Where a report has been sent in violation of these provisions, the unit referred to in Article L. 561-23 shall refuse delivery thereof and inform, as applicable, the President of the Ordre des avocats of the Conseil d'Etat and of the court of cassation, the President of the Order which the declaring avocat belongs to or the President of the professional body which the declaring counsel belongs to, as soon as possible.

Said exception shall not apply to an avocat acting as a fiduciary.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

Article L. 561-18. - The report referred to in Article L. 561-15 shall be made in writing. It may nevertheless be received verbally, except for the individuals referred to in Article L. 561-17, by the unit referred to in Article L. 561-23 via a means which enables the latter to verify its admissibility under terms set forth in a decree issued following consultation with the Conseil d'Etat.

Said unit shall acknowledge receipt of the report unless the individual referred to in Article L. 561-2 has expressly indicated that it does not wish to receive such acknowledgement.

The manner in which the unit acknowledges receipt of the report and verifies its admissibility are stipulated in a decree issued following consultation with the Conseil d'Etat.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

Article L. 561-19. - I. — The report referred to in Article L. 561-15 shall be confidential.

Without prejudice to the provisions of the aforementioned Article 44 of Act No. 78-17 of 6 January 1978, it is prohibited, under pain of the sanctions provided for in Article L. 574-1, for the senior managers and employees of financial institutions, the entities referred to in Article L. 561-2, the President of the Ordre des avocats of the Conseil d'Etat and of the court of cassation, the President of the Order which the avocat belongs to or the President of the professional body which the counsel belongs to,

to draw to the attention of the owner of the sums or the originator of one of the transactions referred to in Article L. 561-15 or of third parties, other than the supervisory authorities, professional bodies and national representative authorities referred to in Article L. 561-36, to the existence and the content of a report made to the unit referred to in Article L. 561-23 and to disclose information regarding the outcome of said report.

The fact of the entities referred to in paragraph 13 of Article L. 561-2 endeavouring to dissuade their client from taking part in an illegal activity shall not constitute disclosure within the meaning of the previous paragraph.

II. — The senior managers and employees of the entities referred to in paragraphs 1 to 7 of Article L. 561-2 may reveal to the courts or to duly empowered law enforcement officers that information has been sent to the unit referred to in Article L. 561-23 pursuant to Article L. 561-15. In which case, the courts or the law enforcement officers may request confirmation of the existence of said report from said unit.

The report referred to in Article L. 561-15 shall be accessible to the courts only via a requisition to the unit referred to in Article L. 561-23 and only in cases where said report is required to establish the liability of the entities referred to in Article L. 561-2 or of their senior managers and employees or that of the authorities referred to in Article L. 561-17, and where the criminal investigation indicates that they may be implicated in the money laundering or terrorist financing mechanism that they have uncovered.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

Article L. 561-20. - As an exception to Article L. 561-19, the entities referred to in paragraphs 1 to 6 of Article L. 561-2, the financial holding companies and the mixed financial holding companies which belong to the same group, as defined in paragraph III of Article L. 511-20 of this code, Articles L. 322-1-2, L. 322-1-3 and L. 334-2 of the Insurance Code, Articles L. 111-4-2 and L. 212-7-1 of the Mutuality Code and Article L. 933-2 of the Social Security Code, on the one hand, and, on the other hand, the entities referred to in paragraphs 12 and 13 of Article L. 561-2 of this code which belong to the same network or the same professional practice structure, may be informed of the existence and content of the report referred to in Article L. 561-15 where the following conditions are met:

a) Information is exchanged only between the entities in the same group, the same network or the same professional practice structure which are subject to the obligation to make a report referred to in Article L. 561-15;

b) The information disclosed is needed to implement due diligence with regard to the prevention of money laundering and terrorist financing within the same group, the same network or the same professional practice structure, and shall be used solely for that purpose;

c) The information is disclosed for the benefit of an institution located in France or in a country included in the list referred to in paragraph II, 2 of Article L. 561-9;

d) The processing of the information carried out in said country ensures an adequate level of protection of the private life and the fundamental freedoms and rights of persons pursuant to Articles 68 and 69 of the aforementioned Act No. 78-17 of 6 January 1978.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

*Amended by Order No. 2010-737 of 1 July 2010 Art. 31 Official Journal of 2 July 2010*

Article L. 561-21. - As an exception to Article L. 561-19, the entities referred to in paragraphs 1 to 7 and 12 and 13 of Article

L. 561-2 may, when they act for the same client in the same transaction, inform each other of the existence and content of the report referred to in Article L. 561-15. Such exchanges of information shall be authorised only between the entities referred to in paragraphs 1 to 6, the entities referred to in paragraph 1 bis which principally provide the service referred to in Article L. 314-1, the entities referred to in paragraph 7 or the entities referred to in paragraphs 12 and 13 of Article L. 561-2, where the following conditions are met:

a) The entities referred to in paragraphs 1 to 7 and in paragraphs 12 and 13 of Article L. 561-2 have an institution in France or in a country included in the list referred to in Article L. 561-9(II, 2);

b) Said entities shall be subject to equivalent obligations with regard to professional secrecy;

c) The information exchanged is used solely for the purpose of preventing money laundering and terrorist financing;

d) The processing of the information disclosed, where it takes place in a third country, ensures an adequate level of protection of the private life and the fundamental freedoms and rights of persons, pursuant to Articles 68 and 69 of the aforementioned Act No. 78-17 of 6 January 1978.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 14 Official Journal of 16 July 2009*

*Amended by Order No. 2010-853 of 23 July 2010 Art. 23 Official Journal of 24 July 2010*

Article L. 561-22. - I. — No proceedings founded on Articles 226-10, 226-13 and 226-14 of the Criminal Code may be brought against:

a) The entities referred to in Article L. 561-2 or their senior managers and employees or the authorities referred to in Article L. 561-17 where they have, in good faith, made the report referred to in Article L. 561-15 as provided for in the applicable laws or regulations or where they have sent information to the unit referred to in Article L. 561-23 pursuant to Article L. 561-26;

b) The supervisory authorities which have sent information to the unit referred to in Article L. 561-23 pursuant to paragraph II of Article L. 561-30;

c) The entities which have sent information to said unit pursuant to Article L. 561-27 and of III of Article L. 561-30.

II. — No action for civil damages may be brought against and no professional sanction imposed on:

a) The entities referred to in Article L. 561-2 or their managers and employees or the authorities referred to in Article L. 561-17, where they have, in good faith, made the report referred to in Article L. 561-15, as provided for in the applicable laws or regulations, inter alia in Article L. 561-16, or where they have sent information to the unit referred to in Article L. 561-23 pursuant to Article L. 561-26;

b) The supervisory authorities which have sent information to the unit referred to in Article L. 561-23 pursuant to paragraph II of Article L. 561-30;

c) The entities which have sent information to said unit pursuant to Article L. 561-27 and paragraph III of Article L. 561-30.

In the event of damage resulting directly from such a report, the State assumes liability therefor.

III. — The provisions of this Article shall apply even where the proof of the criminal nature of the acts giving rise to the report referred to in Article L. 561-15, of the information sent pursuant to Articles L. 561-27 and L. 561-30 or of the exercise of

the right of disclosure referred to in Article L. 561-26 is not reported or where the proceedings instituted on the basis of said acts have resulted in a decision to nonsuit, discharge or acquit.

IV. — Where the transaction was executed as provided for in Articles L. 561-16 or L. 561-25 and barring any fraudulent collusion with the owner of the sums or with the originator of the transaction, the entities referred to in Article L. 561-2 shall be exempted from any liability, and no criminal proceedings may be brought against its senior managers or its employees on that account pursuant to Articles 222-34 to 222-41, 321-1, 321-2, 321-3, 324-1, 324-2 and 421-2-2 of the Criminal Code or of Article 415 of the French Customs Code.

V. — Barring any fraudulent collusion with the owner of the sums or the originator of the transaction, the entities referred to in paragraph 1 of Article L. 561-2 shall not incur criminal liability pursuant to Articles 222-34 to 222-41, 321-1, 321-2, 321-3, 324-1 and 324-2 of the Criminal Code or Article 415 of the Customs Code where they open an account as directed by the Banque de France pursuant to Article L. 312-1 of this code.

The same shall apply to transactions executed by the entity thus directed where the client has been the subject of a report referred to in Article L. 561-15 and has met the obligation of due diligence referred to in paragraph I of Article L. 561-10-2.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

*Amended by Order No. 2010-853 of 23 July 2010 Art. 23 Official Journal of 24 July 2010*

## Section 5 National Financial Information Unit

*Section inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

Article L. 561-23. - I. — A National Financial Information Unit exercises the functions referred to in this chapter. It is composed agents expressly authorised by the Minister for the Economy. The conditions of said authorisation as well as the organisation and terms of operation of said unit are determined by decree issued following consultation with the Conseil d'Etat.

II. — The unit referred to in paragraph I receives the reports referred to in Article L. 561-15 and the information referred to in Articles L. 561-26, L. 561-27, L. 561-30 and L. 561-31.

Said unit shall collect, analyse, develop and make use of any information likely to establish the origin or the destination of the sums or the nature of the transactions that have been the subject of a report referred to in Article L. 561-15 or of information received by virtue of Articles L. 561-26, L. 561-27, L. 561-30 or L. 561-31.

Where its investigations reveal acts likely to relate to the laundering of the proceeds of an offence punishable by a custodial sentence in excess of one year or to terrorist financing, and leaving aside the hypothesis of the only offence being the one referred to in Article 1741 of the Code Général des Impôts, the unit referred to in paragraph I shall refer the matter to the Public Prosecutor via a memorandum.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

Article L. 561-24. - In the event of the unit referred to in Article L. 561-23 referring the matter to the Public Prosecutor, the report referred to in Article L. 561-15 or the information provided pursuant to Articles L. 561-26, L. 561-27, L. 561-30 or L. 561-31 shall be omitted from case file in order to preserve the anonymity of its originators.

In the cases which have been the subject of a memorandum pursuant to this chapter, the Public Prosecutor or the chief Public Prosecutor shall inform said unit of the commencement of proceedings, of the withdrawal of the proceedings and of the decisions handed down by a criminal court.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

Article L. 561-25. - The unit referred to in Article L. 561-23 may object to the execution of a transaction which has been the subject of a report drawn up pursuant to Article L. 561-15. Its objection shall be notified to the originator of the report under terms set forth in a decree issued following consultation with the Conseil d'Etat within one business day of the date of receipt of the report.

In such cases, the transaction shall be delayed for a period of two business days commencing on the day of issue of said notification.

The President of the Regional Court of Paris may, at the request of the unit referred to Article L. 561-23, and after consulting the Public Prosecutor of said tribunal, extend the period indicated in the first paragraph or order the provisional sequestration of the funds, accounts or securities covered by the report. The Public Prosecutor may present a petition having the same object. The order granting the petition shall be immediately enforceable before any notification is given to the originator of the report referred to in Article L. 561-15.

The transaction which was the subject of the report may be executed if the unit has not raised an objection thereto or if, upon expiry of the period commenced upon notification of the objection, no decision of the President of the Regional Court of Paris has been notified to the entity referred to in Article L. 561-2.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

Article L. 561-26. - I. — For the purposes of this chapter, the unit referred to in Article L. 561-23 may require that the documents retained pursuant to paragraph II of Article L. 561-10-2 and to Articles L. 561-12 and L. 561-13 be disclosed to it regardless of the medium used for their storage and within the time limit that it determines. Said right shall be exercised, place on the spot for the entities referred to in paragraphs 1 to 7 of Article L. 561-2 and via submission of documents for the other entities referred to in this article, with a view to reconstructing all of the transactions executed by an individual or a legal entity linked to a transaction which has been the subject of a report referred to in Article L. 561-15 or of information received by virtue of Articles L. 561-27, L. 561-30 or L. 561-31, and also with a view to informing foreign financial information units as provided for in Article L. 561-31.

II. — As an exception to paragraph I, requests for disclosure of documents made to the avocats attached to the Conseil d'Etat and to the court of cassation and to the avocats and counsels attached to the courts of appeal shall be submitted by the unit, as applicable, to the President of the Ordre des avocats of the Conseil d'Etat and of the court of cassation, the President of the Order which the avocat belongs to or the President of the professional body which the counsel belongs to.

The avocat attached to the Conseil d'Etat and to the court of cassation, the avocat or counsel attached to the court of appeal shall send the documents requested from him to the authority he comes under. Said authority shall send them to the unit pursuant to the terms set forth in Article L. 561-17.

If said procedure is not complied with, the avocat attached to the Conseil d'Etat and to the court of cassation or the avocat or counsel attached to the court of appeal shall be entitled to raise

an objection to disclosure of the documents requested from the unit referred to in Article L. 561-23.

Said exception shall not apply to an avocat acting as a fiduciary.

III. — Under pain of the sanctions referred to in Article L. 574-1, the senior managers and entities referred to in Article L. 561-2, the President of the Ordre des avocats of the Conseil d'Etat and of the court of cassation, the President of the Order which the avocat belongs to or the President of the professional body which the counsel belongs to shall be prohibited from drawing the attention of the owner of the sums or of the originator of one of the transactions referred to in Article L. 561-15 or of third parties, other than the supervisory authorities, professional bodies and national representative authorities referred to in Article L. 561-36, to the information obtained through the exercise by the unit referred to in Article L. 561-23 of the right of disclosure referred to in Article L. 561-26.

The fact of the entities referred to in paragraph 13 of Article L. 561-2 endeavouring to dissuade their client from taking part in an illegal activity shall not constitute disclosure within the meaning of the previous paragraph.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

*Amended by Order No. 2010-853 of 23 July 2010 Art. 23 Official Journal of 24 July 2010*

Article L. 561-27. - The unit referred to in Article L. 561-23 shall receive, on the initiative of the administrations of the State, of the territorial authorities, of the public institutions, of the bodies referred to in Article L. 134-1 of the Financial Courts Code and of any other entity tasked with a public service mission, all the information required to perform its duties or shall obtain it at its request.

The courts, the tax courts and law enforcement officers may send it any information for the same purposes.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

Article L. 561-28. - I. — Where, on the basis of a report made pursuant to Article L. 561-15, the unit referred to in Article L. 561-23 refers the matter to the Public Prosecutor, it shall duly inform the entity referred to in Article L. 561-2 which made the report.

Where the report has been sent to it by the President of the Ordre des avocats of the Conseil d'Etat and of the court of cassation, the President of the Order which the avocat belongs to or the President of the professional body which the counsel belongs to, pursuant to Article L. 561-17, said unit shall inform said authorities of the forwarding of the report to the Public Prosecutor.

II. — The unit referred to in Article L. 561-23 may, where the circumstances warrant it, inform the entities which sent it information pursuant to the first paragraph of Article L. 561-27 that it has made a referral to the Public Prosecutor on the basis of said information.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

*Amended by Order No. 2010-853 of 23 July 2010 Art. 23 Official Journal of 24 July 2010*

Article L. 561-29. - I. — Without prejudice to application of Article 40 of the French Code of Criminal Proceedings, the information held by the unit referred to in Article L. 561-23

cannot be used for purposes other than those envisaged in this chapter.

Its disclosure is prohibited but this shall not obstruct application of the provisions of the aforementioned Article 44 of Act No. 78-17 of 6 January 1978.

II. — However, insofar as it relates to the acts referred to in paragraph I of Article L. 561-15, said unit shall be authorised to disclose the information it holds to the customs administration and to law enforcement units.

It may also send the specialised intelligence services information relating to acts that are likely to reveal a threat to the fundamental interests of the nation with regard to law and order and State security.

It may also send information on acts likely to relate to the offence described in Article 1741 of the Code Général des Impôts, or to the laundering of the proceeds thereof, to the tax administration, which may use it in the performance of its duties. In the latter case, the Minister for the Budget shall forward it to the Public Prosecutor subject to a concurring opinion from the tax offences commission given as provided for in Article L. 228 A of the Book of Tax Procedures.

Where, after a memorandum has been sent to the Public Prosecutor pursuant to the last paragraph of paragraph II of Article L. 561-23, the laundering offence's underlying offence proves to be the offence referred to in Article 1741 of the Code Général des Impôts, the opinion of the commission referred to in Article L. 228 A of the Book of Tax Procedures need not be sought.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

Article L. 561-30. - I. — I.-The unit referred to in Article L.561-23 shall exchange with the supervisory authorities, professional bodies and national representative bodies referred to in Article L.561-36 any information required to perform their respective duties pursuant to this chapter.

II. - If, in the performance of their duties, the supervisory authorities and the professional bodies uncover acts likely to be linked to money laundering or to terrorist financing, they shall report them to the unit referred to in Article L.561-23.

Said unit shall acknowledge receipt thereof and may, at their request, keep them informed of the outcome.

III. - As an exception to the provisions of II, if, in the performance of their duties, the Conseil de l'Ordre des Avocats or the Chambre de la Compagnie des Avoués of the court of appeal has knowledge of acts likely to be linked to money laundering or to terrorist financing, the President of the Council or of the Chamber, as applicable, shall inform the Public Prosecutor attached to the court of appeal, who shall then forward said information to the unit referred to in Article L.561-23 without delay.

The President of the Conseil de l'Ordre des Avocats of the Conseil d'Etat and of the court of cassation shall report any acts of the same kind which the Order has knowledge of to the Public Prosecutor attached to the court of cassation, who shall forward such information to said department without delay.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

Article L. 561-31. - The unit referred to in Article L.561-23 may communicate to its counterparts abroad, at their request or on its own initiative, the information it holds relating to sums or transactions which appear to have as their object the laundering of the proceeds of an offence punishable by a custodial sentence

of more than one year or the financing of terrorism, subject to reciprocity and to the following conditions being met:

a) The foreign authorities must be subject to confidentiality obligations which are at least equivalent;

b) The processing of the information communicated must guarantee adequate protection of privacy and of fundamental human rights and freedoms, pursuant to Articles 68 and 69 of the aforementioned Act of 6 January 1978.

Such information cannot be communicated (if criminal proceedings have been instituted in France on the basis of the same acts or) if this would compromise sovereignty, national interests, security or public order.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

## Section 6 Internal procedures and auditing

*Section inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

Article L. 561-32. - The entities referred to in Article L. 561-2 shall put systems in place to assess and manage the risks of money laundering and of terrorist financing.

The implementing provisions of this article are set forth in a decree issued following consultation with the Conseil d'Etat and, for the financial institutions referred to in paragraph 2 of Article L. 561-36, in the General Regulation of the Autorité des Marchés Financiers.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

Article L. 561-33. - The entities referred to in Article L. 561-2 shall provide their staff with regular training and information to ensure compliance with the obligations laid down in chapters I and II of this Part.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

Article L. 561-34. - The entities referred to in Article L. 561-2 shall apply measures at least equal to those referred to in Chapter I of this Part with regard to due diligence in relation to the client and the retention of information in their branches located abroad. They shall ensure that equivalent measures are applied in their subsidiaries having their registered office abroad.

Where the law applicable locally does not allow them to implement equivalent measures in their branches and subsidiaries abroad, the entities concerned shall duly inform the unit referred to in Article L. 561-23 and the supervisory authority referred to in Article L. 561-36 that they come under.

The financial institutions shall inform their branches and subsidiaries located abroad of the minimum appropriate measures to be taken with regard to the prevention of money laundering and terrorist financing.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

Article L. 561-35. - The entities enumerated in Article L. 561-2 and the supervisory authorities referred to in Article L. 561-36 shall receive from the unit referred to in Article L. 561-23 the information it has available on the money laundering or terrorist financing mechanisms.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*



## Section 7 Supervisory authorities and administrative sanctions

*Section inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

### Subsection 1 General provisions

*Subsection inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

Article L. 561-36. - I. — Monitoring of the obligations laid down in chapters I and II of this Part and, where applicable, the power to impose penalties in the event of non-compliance therewith, shall rest with:

1 a) The Autorité de Contrôle Prudentiel for the authorised intermediaries referred to in Article L. 211-4, for the Caisse des Dépôts et Consignations, and for the firms and entities which are subject to it by virtue of Article L. 612-2, with the exception of those referred to in subparagraphs I, A, 4, 6, 7, B, 6, 7, and II, 3 of said article;

b) To this end, the Autorité de Contrôle Prudentiel's supervision of the Caisse des Dépôts et Consignations shall be exercised, in the manner described in Article L. 612-17, pursuant to the terms set forth in Articles L. 612-23 to L. 612-27, L. 612-31, L. 612-44, and in paragraphs 1 and 2 of Article L. 612-39;

The Autorité de Contrôle Prudentiel may send the Caisse des Dépôts et Consignations recommendations or orders regarding the taking of appropriate measures to improve its procedures or its organisation.

The Autorité de Contrôle Prudentiel may also impose on it, either instead of, or in addition to, the penalties referred to in paragraphs 1 and 2 of Article L. 612-39, given the seriousness of the violations, a financial penalty of a maximum amount equal to ten times the minimum capital that the banks are required to maintain. The corresponding sums shall be recovered by the Trésor public and paid into the State budget.

Where it sends recommendations or orders to the Caisse des Dépôts et Consignations or imposes penalties on it, the Autorité de Contrôle Prudentiel shall seek the prior opinion of the Supervisory Commission referred to in Articles L. 518-4 to L. 518-10.

For the implementation of subparagraph 1, b of this article, Articles L. 571-4, L. 613-20-1 and L. 613-20-2 shall apply to the Caisse des Dépôts et Consignations group and to its senior managers;

2 The Autorité des Marchés Financiers, for management companies and portfolio management companies, by virtue of their activities referred to in paragraph 6 of Article L. 561-2, for central custodians and the managers of systems used for settlement and delivery of financial instruments and for financial investment advisors;

4 The council of the bar with which the avocats are registered, with pursuant to Article 17 of Act No. 71-1130 of 31 December 1971 reforming certain judicial and legal professions. It may be assisted in its supervisory duties by the Conseil National des Barreaux (National Bar Council) pursuant to Article 21-1 of said law;

5 The Chambers of notaries for the notaries who are their members, pursuant to Article 4 of Order No. 45-2590 of 2 November 1945 relating to the status of the notarial profession;

6 The local Chambers of the bailiffs (huissiers de justice) for the bailiffs who are their members, pursuant to Article 6 of Order

No. 45-2592 of 2 November 1945 relating to the status of the bailiffs;

7 The disciplinary Chamber of the court-appointed auctioneers and valuers for the court-appointed auctioneers and valuers who are their members, pursuant to Article 8 of Order No. 45-2593 of 2 November 1945;

8 The Conseil de l'Ordre des Avocats of the Conseil d'Etat and of the court of cassation for the avocats attached to the Conseil d'Etat and to the court of cassation, pursuant to Article 13-1 of the Order of 10 September 1817 which groups together, under the designation Ordre des avocats of the Conseil d'Etat and of the court of cassation, the Ordre des avocats of the councils and the college of the avocats attached to the Conseil d'Etat and to the court of cassation, irrevocably determines the number of incumbents and contains provisions for the Order's internal discipline;

9 As determined in Part I of Book VIII of the Commercial Code for court-appointed administrators and court-appointed receivers;

10 As determined in Part II of Book VIII of the Commercial Code for statutory auditors;

11 The Order of Accountants for Accountants and the employees authorised to practice the profession of Accountant, pursuant to Articles 83 ter and 83 quater of Order No. 45-2138 of 19 September 1945 which instituted the Order of Accountants and regulates the title and profession of Accountant, pursuant to Article 1 of said order;

12 The council of voluntary sales of movables at public auctions for companies carrying out voluntary sales of movables at public auctions, pursuant to Articles L. 321-18 and L. 321-22 of the Commercial Code.

II. – Supervision of the obligations laid down in chapters I and II of this Part shall be exercised for the entities referred to in paragraphs 8, 9 and 15 of Article L. 561-2 through inspections carried out by the competent administrative authority as specified in a decree issued following consultation with the Conseil d'Etat. Supervision of the obligations laid down in chapters I and II of this Part shall be exercised for the entities referred to in paragraph 9 bis of Article L. 561-2 by the Autorité de Régulation des Jeux en Ligne (Online Gaming Regulatory Authority).

The inspections shall be carried out by inspectors expressly authorised by the administrative authority.

The inspectors may ask the entities inspected for sight of any document, held on whatever medium, and obtain a copy thereof, as well as any information or proof required in the performance of their duties, and professional secrecy cannot be raised.

The inspectors may also obtain from the administrations of the State, the territorial authorities, the public institutions, the bodies referred to in Article L. 134-1 of the Tax Courts Code, and from any other organisation or entity tasked with a public service mission, all the information required to perform their duties.

II bis. - The administrative authority responsible for inspecting the entities referred to in 15 of Article L. 561-2 of this code shall monitor compliance with the obligations laid down in the first paragraph of said Article, as provided for in Articles L. 450-1 to L. 450-3 and L. 450-8 of the Commercial Code.

II ter. - The administrative authority responsible for inspecting the entities referred to in paragraph 9 of Article L. 561-2 of this code may, during said entities' normal business hours, enter their business premises, excluding any parts of said premises that are used as private living accommodation, for the purpose of detecting and recording any breaches of the applicable rules referred to in the first paragraph. Said authority may collect information and elements of proof on the spot or organise a hearing for said purpose.

The hearings of the individuals and legal entities inspected organised by the inspectors shall be the subject of written reports. Upon completion of the inspection, the inspectors shall draw up minutes that indicate the nature, date and location thereof. A list of the documents of which a copy has been provided shall be appended thereto. The report shall be signed by the inspectors who carried out the inspection and by the individual inspected or, in the case of a legal entity, its representative.

The individual or legal entity inspected shall have a period of thirty days in which to make any observations thereon. They shall be appended to the file. In the event of a refusal to sign, this shall be noted in the report. A copy of the report shall be handed to the party concerned.

The report and the minutes of the hearing and any observations of the individual or legal entity inspected shall be sent to the National Enforcement Commission (Commission Nationale des Sanctions) as soon as possible.

III. – Where, as a result of either a serious lack of due diligence or a failure in the organisation of its internal auditing procedures, an entity referred to in paragraphs 1 to 7 and 11 to 14 of Article L. 561-2 has failed to comply with the obligations deriving from this Part, the supervisory authority shall institute proceedings founded on the professional or administrative rules and shall notify the Public Prosecutor thereof.

By way of exception, for the *avocats* attached to the Conseil d'Etat and to the court of cassation and the *avocats* and counsel attached to the courts of appeal, said notification shall be sent, as applicable, to the chief public prosecutor attached to the court of cassation or to the chief public prosecutor attached to the court of appeal.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

*Amended by Act No. 2009-526 of 12 May 2009 Art. 140 Official Journal of 13 May 2009*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 10 and 14 Official Journal of 16 July 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 5 Official Journal of 22 January 2010*

*Amended by Act No. 2010-476 of 12 May 2010 Art. 22 and 64 Official Journal of 13 May 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 12 Official Journal of 23 October 2010*

## Subsection 2 National Enforcement Commission

*Subsection inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

Article L. 561-37. – Any violation of the provisions of sections 3, 4, 5 and 6 of this chapter by the entities referred to in paragraphs 8, 9, 9 bis and 15 of Article L. 561-2 shall incur the sanctions referred to in Article L. 561-40.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

*Amended by Act No. 2010-476 of 12 May 2010 Art. 22 Official Journal of 13 May 2010*

Article L. 561-38. – A National Enforcement Commission is established under the Minister for the Economy responsible for imposing the sanctions referred to in Article L. 561-40. Violations recorded during the inspections carried out pursuant to paragraph II of Article L. 561-36 shall be referred to it by:

1 The Minister for the Economy or the Minister for the Budget for the entities referred to in paragraph 8 of Article L. 561-2;

2 The Minister of the Interior, the Minister for the Economy or the Minister for the Budget for the individuals referred to in paragraph 9 of Article L. 561-2;

2 bis The *Autorité de Régulation des Jeux en Ligne* for the individuals referred to in paragraph 9 bis of said Article L. 561-2;

3 By the Minister for the Economy for the entities referred to in paragraph 15 of said Article.

The dissolution of the legal entity, or the cessation of trading or the resignation of an individual referred to in paragraphs 8, 9, 9 bis and 15 of Article L. 561-2, shall not impede the bringing of disciplinary proceedings against them if the violations they are accused of were committed while they were trading.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

*Amended by Act No. 2010-476 of 12 May 2010 Art. 22 and 64 Official Journal of 13 May 2010*

Article L. 561-39. - I. — The National Enforcement Commission is composed of a councillor of the Conseil d'Etat designated by the vice-president of that body, a justice of the court of cassation designated by the chief justice of that court and senior member of the court of auditors designated by the auditor general, as well as four prominent individuals with legal or financial expertise.

II. — The chairman and the members of the commission, as well as their deputies, shall be appointed by decree for a term of five years, renewable once. They shall be bound by professional secrecy.

III. — The commission shall rule on a majority of the members present. In the event of there being a hung vote, the chairman shall have a casting vote.

IV. — A decree issued following consultation with the Conseil d'Etat sets forth the commission's operational conditions.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

Article L. 561-40. – The National Enforcement Commission may impose one of the following administrative sanctions:

1. A warning;

2. A reprimand;

3 A temporary ban on carrying out the activity for a period not exceeding five years;

4 Withdrawal of approval or of the professional licence.

The temporary ban on carrying out the activity may be suspended. If the individual sanctioned commits an offence or a violation giving rise to the imposition of a further ban within five years of the imposition of the first, this shall, in the absence of a reasoned decision, entail execution of the first sanction with no possibility of concurrency with the second.

The commission may impose, either instead of, or in addition to, said sanctions, a fine of an amount determined on the basis of the seriousness of the breaches committed, which shall not exceed five million euros. Said sums shall be collected by the Trésor public.

The commission may decide that the sanctions it imposes should be published, at the expense of the individual sanctioned, in the newspapers or other publications that it designates.

The commission may decide to make the individual sanctioned responsible for meeting some or all of the costs incurred through the investigation that enabled the sanctioned acts to be detected.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

Article L. 561-41. - The National Enforcement Commission shall receive the reports drawn up following the inspections conducted by the administrative authorities referred to in paragraph II of Article L. 561-36 and shall notify the allegations to the individual charged or, in the case of a legal entity, to its legal representative.

Where applicable, said allegations shall also be notified to the central body which the individual charged is affiliated with and brought to the attention of the professional body he is a member of.

Where, as a result of either a serious lack of due diligence or a failure in the organisation of its internal auditing procedures, an entity referred to in paragraphs 8, 9 and 15 of Article L. 561-2 has failed to comply with the obligations deriving from this Part, the National Enforcement Commission shall institute disciplinary proceedings and shall notify the Public Prosecutor thereof.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

*Amended by Act No. 2009-526 of 12 May 2009 Art. 140 Official Journal of 13 May 2009*

Article L. 561-42. - If the rapporteur is not present, the National Enforcement Commission shall rule on the basis of a reasoned decision. No sanction may be imposed unless the entity concerned or its representative has been heard or, failing that, duly summoned.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

Article L. 561-43. - Appeals lodged against the decisions of the National Enforcement Commission are remedies of full jurisdiction.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

Article L. 561-44. - The implementing provisions of this subsection, inter alia the conditions for challenging members of the National Enforcement Commission, are set forth in a decree issued following consultation with the Conseil d'Etat.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

## Section 8 Right of indirect access to data

*Section inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

Article L. 561-45. - Where information of a personal nature is processed solely for the purposes of Articles L. 561-5 to L. 561-23 by an entity referred to in Article L. 561-2, the right of access thereto shall be exercised in relation to the national commission for data protection and privacy.

The commission shall designate one of its members belonging to, or having belonged to, the Conseil d'Etat, the court of cassation or the Court of Auditors to carry out the necessary investigations and to have the necessary changes implemented. Said member may arrange to be assisted by an agent of the commission.

The information may be disclosed to the requestor where the commission finds, in agreement with the unit referred to in Article L. 561-23 and following consultation with the processing

unit, that such disclosure is unlikely to reveal the existence of a report referred to in Article L. 561-15 or its consequences, or the exercise by the unit referred to in Article L. 561-23 of its right of disclosure referred to in Article L. 561-26, or to undermine the aim of preventing money laundering and terrorist financing where the information relates to the requestor and is held in connection with implementation of the provisions of Articles L. 561-8, L. 561-9 and L. 561-10.

Where disclosure of the information is likely to undermine the aim of the processing, the national commission for data protection and privacy, consulted by the requestor, shall inform him that it has carried out the necessary verifications.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009*

## Chapter II Obligations relating to the freezing of assets

*Part Amended by Order No. 2009-104 of 31 January 2009 Art. 3 Official Journal of 31 January 2009*

### Section 1 Freezing of assets in connection with the prevention of terrorist financing

*Section inserted by Order No. 2009-104 of 31 January 2009 Art. 3 Official Journal of 31 January 2009*

Article L. 562-1. - Without prejudice to the specific restrictive measures taken pursuant to the regulations of the Council of the European Union and the measures imposed by the courts, the Minister for the Economy may decide to freeze, for a renewable period of six months, some or all of any funds, financial instruments and economic resources held with the institutions and entities referred to in Article L. 561-2 (1) which belong to individuals or legal entities who commit, or attempt to commit, terrorist acts, or who facilitate or participate in such acts, as defined in paragraph 4 of Article 1 of Council Regulation (EC) No. 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, and against legal entities that are held by such individuals or are directly or indirectly controlled by them within the meaning of paragraphs 5 and 6 of the aforementioned Article 1 of Council Regulation (EC) No. 2580/2001 of 27 December 2001. The income produced by the aforementioned funds, instruments and resources shall also be frozen.

*Inserted by Act No. 2006-64 of 23 January 2006 Art. 23 Official Journal of 24 January 2006*

*Amended by Order No. 2009-104 of 31 January 2009 Art. 2 Official Journal of 31 January 2009 –formerly Article L. 564-2*

NB (1): read L. 561-2 instead of L. 562-3: to be amended as applicable

*Art. L. 564-1, Art. L. 564-3 to 6. Repealed by Order No. 2009-104 of 31 January 2009 Art. 3 Official Journal of 31 January 2009*

### Section 2 Freezing of assets in connection with the international financial sanctions

*Section inserted by Order No. 2009-104 of 31 January 2009 Art. 3 Official Journal of 31 January 2009*

Article L. 562-2. - Pursuant to the resolutions adopted within the purview of Chapter VII of the United Nations Charter or of

the acts adopted pursuant to Article 15 of the European Union Treaty, the Minister for the Economy may decide to freeze, some or all of any funds, financial instruments and economic resources held with the entities referred to in Article L. 561-2 which belong to individuals or legal entities, organisations or entities which have committed, or commit, or which, on account of their functions, are likely to commit, acts sanctioned or prohibited by said resolutions or by said acts, or which facilitate or participate in such acts or which belong to legal entities which are held by said individuals which or are directly or indirectly controlled by them. The income produced by the aforementioned funds, instruments and resources shall also be frozen.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 3 Official Journal of 31 January 2009*

### Section 3 Common provisions

*Section inserted by Order No. 2009-104 of 31 January 2009 Art. 3 Official Journal of 31 January 2009*

Article L. 562-3. - The entities referred to Article L. 561-2 that hold or receive funds, financial instruments and economic resources shall be required to apply the freezing or prohibition measures taken by virtue of this chapter.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 3 Official Journal of 31 January 2009*

Article L. 562-4. - For the purposes of this chapter, "funds, financial instruments and economic resources" shall mean assets of whatever kind, tangible or intangible, movable or immovable, acquired through whatever means, and documents or legal instruments in whatever form, including electronic and digitised forms, which prove a property right or controlling interest in such assets, including, inter alia, bank credits, travellers cheques, bank cheques, orders to pay, shares, securities, bonds, bills and letters of credit.

For the purposes of this chapter, the "freezing of funds, financial instruments and economic resources" held with the entities referred to in Article L. 561-2 shall mean any action intended to prevent any movement, transfer or use of funds, financial instruments and economic resources which would result in a change in their value, their location, their ownership or their nature, or any other change which could facilitate their use by the individuals or legal entities against whom/which the freezing order is applied.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 3 Official Journal of 31 January 2009*

Article L. 562-5. - The Minister for the Economy may decide to prohibit, for a renewable period of six months, any movement or transfer of funds, financial instruments and economic resources to the individuals or legal entities, organisations or entities that own the funds, financial instruments and economic resources and are referred to in Article L. 562-1 or Article L. 562-2. Said measures shall also apply to movements or transfers of funds, financial instruments and economic resources whose execution order was issued prior to the date of publication of the minister's decision.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 3 Official Journal of 31 January 2009*

Article L. 562-6. - Decisions of the Minister taken pursuant to this chapter shall be published in the Official Journal and shall be enforceable with effect from their date of publication.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 3 Official Journal of 31 January 2009*

Article L. 562-7. - The prohibition orders or freezing orders imposed by virtue of this chapter shall apply to any co-owner of the aforementioned funds, financial instruments and resources, and to any individual or legal entity who/which holds an account jointly with an individual or legal entity who/which is an owner, remainderman or usufructuary referred to in Article L. 562-1 or Article L. 562-2.

Said measures shall be binding on any creditor and any third party able to invoke rights over the funds, financial instruments and economic resources in question, even if the origin of such receivables or other rights precedes publication of the order.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 3 Official Journal of 31 January 2009*

Article L. 562-8. - Banking secrecy or professional secrecy shall not impede exchanges of information between the entities referred to in Article L. 561-2 and the government departments responsible for implementing a freezing or prohibition measure on the movement or transfer of funds, financial instruments and economic resources where such information is needed to verify the identity of the individuals or legal entities directly or indirectly affected by said measure. The information provided or exchanged may be used solely for that purpose.

The government departments responsible for implementing a freezing or prohibition measure on the movement or transfer of funds, financial instruments and economic resources and the authorising authorities and supervisory authorities of the entities referred to in Article L. 561-2 shall be authorised to exchange the information required for performance of their respective duties.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 3 Official Journal of 31 January 2009*

Article L. 562-9. - The State shall be liable for the prejudicial consequences of the implementation in good faith by the entities referred to in Article L. 561-2, their senior managers or their employees, of the freezing or prohibition measures set forth in Article L. 562-1 and Article L. 562-2. No professional sanction may be imposed on said entities, their senior managers or their employees.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 3 Official Journal of 31 January 2009*

Article L. 562-10. - The provisions of this chapter shall not apply to the central custodians or to the managers of systems used for settlement and delivery of financial instruments.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 3 Official Journal of 31 January 2009*

Article L. 562-11. - A decree issued following consultation with the Conseil d'Etat shall determine the implementing provisions of this chapter, inter alia the circumstances in which the entities referred to in Article L. 561-2 shall be required to apply freezing or prohibition measures on the movement or transfer of funds, financial instruments and economic resources.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 3 Official Journal of 31 January 2009*



## Chapter III Obligations relating to the prevention of prohibited lotteries, gaming and betting

*Chapter created by Act No. 2007-297 of 5 March 2007 Art. 36 Official Journal of 7 March 2007 numbering changed by Order No. 2009-104 of 31 January 2009 Art. 2, 2 Official Journal of 31 January 2009-formerly Chapter V*

Article L. 563-1. – The organisations, institutions and units governed by Part I of this book which hold or receive funds from the public shall be required to apply the prohibition measures adopted by virtue of this chapter.

*Inserted by Act No. 2007-297 of 5 March 2007 Art. 36 Official Journal of 7 March 2007*

*Numbering changed by Order No. 2009-104 of 31 January 2009 Art. 2, 2 Official Journal of 31 January 2009-formerly Article L. 565-1*

Article L. 563-2. – The Minister for Finance and the Minister of the Interior may decide to prohibit, for a renewable period of six months, any movement or transfer of funds received from individuals or legal entities who/which organise gaming activities, betting or lotteries prohibited by the Act of 21 May 1836 prohibiting lotteries and the Act of 2 June 1891 having as its object regulation of the authorisation and operation of horse racing, as well as Act No. 83-628 of 12 July 1983 relating to games of chance.

The ministers shall lift the prohibition referred to in the first paragraph at the request of the individuals or legal entities affected by it where the movements or transfers of funds take place in the context of transactions which are not prohibited in France.

The decisions of the ministers taken pursuant to this article shall be published in the Official Journal.

The Minister for Finance and the Minister of the Interior may decide to prohibit, for a renewable period of six months, any movement or transfer of funds received from or destined for accounts identified as being held by individuals or legal entities who/which organise gaming activities, betting or lotteries prohibited by the Act of 21 May 1836 prohibiting lotteries and the Act of 2 June 1891 having as its object regulation of the authorisation and operation of horse racing, as well as Act No. 83-628 of 12 July 1983 relating to games of chance.

The ministers shall lift the prohibition referred to in the first paragraph at the request of the individuals or legal entities affected by it where the movements or transfers of funds take place in the context of transactions which are not prohibited in France.

The decisions of the ministers taken pursuant to this article shall be published in the Official Journal.

The Autorité de Régulation des Jeux en Ligne may send the operators of online gaming or betting sites which are not authorised by virtue of an exclusive right or via the approval referred to in Article 21 of Act No. 2010-476 of 12 May 2010 relating to the opening up to competition and the regulation of the online games of chance and gambling sector, by any means which establishes the date of sending, a formal letter of notice indicating the sanctions incurred and the provisions of the following paragraph, ordering said operators to comply with said prohibition and requesting them to submit their observations within eight days.

If, upon expiry of said period, the operator enjoined to cease its unlawful activity of offering betting or games of chance and gambling has failed to do so, the Minister for the Budget may, on a proposal from the Autorité de Régulation des Jeux en Ligne, decide to ban any movement or transfer of funds to and from

accounts identified as being held by said operators for a renewable period of six months.

The Minister for the Budget shall lift the prohibition referred to in the previous paragraph at the request of the individuals or legal entities affected by it where the movements or transfers of funds take place in the context of transactions which are not prohibited in France.

*Inserted by Act No. 2007-297 of 5 March 2007 Art. 36 Official Journal of 7 March 2007*

*Numbering changed by Order No. 2009-104 of 31 January 2009 Art. 2, 2 Official Journal of 31 January 2009-formerly Article L. 565-2*

*Amended by Act No. 2010-476 of 12 May 2010 Art. 62 Official Journal of 13 May 2010*

Article L. 563-3. – The prohibition measures taken by virtue of this chapter shall apply to any co-owner of the funds and to any individual or legal entity who/which holds an account jointly with an individual or legal entity who/which is an owner, remainderman or usufructuary referred to in the first paragraph of Article L. 563-2.(1).

Said measures shall be binding on any creditor and on any third party able to invoke rights over the funds in question, even if the origin of said receivables or other rights predates publication of the order.

The measures referred to in the first paragraph of Article L. 565-2 shall apply to movements or transfers of funds whose execution order was issued prior to the date of the prohibition decision.

*Inserted by Act No. 2007-297 of 5 March 2007 Art. 36 Official Journal of 7 March 2007*

*Numbering changed by Order No. 2009-104 of 31 January 2009 Art. 2, 2 Official Journal of 31 January 2009-formerly Article L. 565-3*

NB (1): read L. 563-2 instead of L. 565-2: to be amended as applicable

Article L. 563-4. – The State shall be liable for the prejudicial consequences of the implementation in good faith, by the organisations, institutions and units governed by Part I of this book, their senior managers or their employees, of the prohibition measures referred to in Article L. 563-2 (1). No professional sanction may be imposed on said organisations, institutions or units, their senior managers or their employees.

*Inserted by Act No. 2007-297 of 5 March 2007 Art. 36 Official Journal of 7 March 2007*

*Numbering changed by Order No. 2009-104 of 31 January 2009 Art. 2, 2 Official Journal of 31 January 2009-formerly Article L. 565-4*

NB (1): read L. 563-2 instead of L. 565-2: to be amended as applicable

Article L. 563-5. – A decree issued following consultation with the Conseil d'Etat shall determine the implementing provisions of this chapter, inter alia the circumstances in which the organisations, institutions and units governed by Part I of this book shall be required to apply the measures to prohibit the movement or transfer of funds taken by virtue of this chapter.

*Inserted by Act No. 2007-297 of 5 March 2007 Art. 36 Official Journal of 7 March 2007*

*Numbering changed by Order No. 2009-104 of 31 January 2009 Art. 2, 2 Official Journal of 31 January 2009-formerly Article L. 565-5*

(Chapter VI Miscellaneous provisions repealed by Order No. 2009-104 of 31 January 2009 Art. 2 3 Official Journal of 31 January 2009)

## PART VII CRIMINAL PROVISIONS

Article L. 570-1. - The fact of any individual disregarding one of the incapacities set forth in Article L. 500-1 shall incur a penalty of three years' imprisonment and a fine of three hundred and seventy-five thousand euros.

*Inserted by Order No. 2005-429 amending the Monetary and Financial Code Art. 2 Official Journal of 7 May 2005*

Article L. 570-2. - Whoever is convicted pursuant to Article L. 570-1 shall no longer be employed, in whatever capacity, in the entity in which he performed management or administrative duties or was a member of a collegiate supervisory organ or had signing authority, or in any subsidiary of said entity.

The fact of any individual disregarding the incapacity set forth in this article shall incur the penalties imposed by Article L. 570-1. An employer who has knowingly so acted shall incur the same penalties.

*Inserted by Order No. 2005-429 amending the Monetary and Financial Code Art. 3 Official Journal of 7 May 2005*

### Chapter I Provisions relating to the institutions of the banking sector

#### Section 1 General provisions

Article L. 571-1. - Legal entities declared criminally liable under the conditions set forth in Article 121-2 of the Criminal Code for the offences indicated in Articles L. 571-3, L. 571-4, L. 571-6 to L. 571-9, L. 571-14 and L. 571-16 shall, in addition to the fines referred to in Article 131-39 of the Criminal Code, incur the penalties referred to in Article 131-39 of said code.

The disqualification referred to in paragraph 2 of Article 131-39 of the Criminal Code relates to the activity in connection with which the offence was committed.

*Amended by Act No. 2009-526 of 12 May 2009 Art. 125 Official Journal of 13 May 2009*

Article L. 571-2. - The courts to which proceedings relating to offences covered by Articles L. 571-3 to L. 571-9 and L. 571-14 to L. 571-16 are referred may request any relevant advice and information from the Autorité de Contrôle Prudentiel at any stage in the proceedings.

Article L. 571-3. - The fact of any entity violating a prohibition set forth in Articles L. 511-5 and L. 511-8 shall incur a penalty of three years' imprisonment and a fine of three hundred and seventy-five thousand euros.

The court may order the posting or publication of the decision handed down, as provided for in Article 131-35 of the Criminal Code.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

Article L. 571-4. - The fact of any senior manager of a credit institution or of a legal entity or subsidiary referred to in Article L. 612-26 failing to respond, after service of a letter of formal notice, to requests for information from the Autorité de Contrôle Prudentiel, or in any way obstructing performance of the latter's supervisory duties, or providing it with inaccurate information, shall incur a penalty of one year's imprisonment and a fine of fifteen thousand euros.

The fact of the individuals and legal entities referred to in Articles L. 511-33 and L. 511-34 violating professional secrecy shall incur the penalties referred to in Article 226-13 of the Criminal Code.

*Replaced by Act No. 2008-776 of 4 August 2008 Art. 154 Official Journal of 5 August 2008*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 5 Official Journal of 22 January 2010*

Article L. 571-5. - The provisions of Articles L. 820-5, L. 820-6 et L. 820-7 of the Commercial Code shall apply to the statutory auditors of all credit institutions, investment firms and financial holding companies, regardless of their legal form.

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 75 Official Journal of 7 May 2005*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 14 Official Journal of 16 July 2009*

Article L. 571-6. - The fact of the senior managers of a credit institution failing to draw up an inventory, a set of annual accounts and a management report for each financial year as determined in Article L. 511-35, shall incur a fine of fifteen thousand euros.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

Article L. 571-7. - The fact of the senior managers of a credit institution failing to appoint the institution's statutory auditors or not inviting them to any General Meeting shall incur a penalty of two years' imprisonment and a fine of thirty thousand euros.

The fact of any senior manager of a credit institution or any individual in the service of such an institution obstructing the statutory auditors' verifications or inspections or refusing to provide them, on the spot, with any document conducive to the performance of their duties, including any contracts, books, accounting records and minute books, shall incur a penalty of five years' imprisonment and a fine of seventy-five thousand euros.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

Article L. 571-8. - The fact of the senior managers of a credit institution failing to publish the annual accounts as determined in Article L. 511-37 shall incur a fine of fifteen thousand euros.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

Article L. 571-9. - The fact of the senior managers of a credit institution failing to draw up the consolidated accounts pursuant to Article L. 511-36 shall incur a fine of fifteen thousand euros.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

## Section 2 Mutual or Cooperative Banks

### Subsection 1 Popular Banks

Article L. 571-10. - The fact of any firm other than those referred to in Article L. 512-2 making use, in any form whatsoever, of the title or term "popular bank", shall incur the penalties referred to in Article 313-1 of the Criminal Code.

### Subsection 2 The Savings Bank Network

Article L. 571-11. - The penalties imposed by Articles 313-1 and 313-2 of the Criminal Code shall apply to whoever violates the prohibitions set forth in Article L. 512-102.

## Section 3 Municipal Credit Banks

Article L. 571-12. - The fact of any individual or legal entity opening or running a pawnbroking establishment without legal authorisation shall incur a penalty of six months' imprisonment and a fine of nine thousand euros.

The same sentence shall be incurred by any individual or legal entity having such authorisation who/which fails to maintain a register which, pursuant to the regulations, indicates on successive lines, without any space between the lines, the sums or objects loaned, the name, domicile and occupation of the borrowers, and the nature, quality and value of the objects pawned.

The same sentence shall also be incurred through the fact of regularly buying or selling the pledging receipts of municipal credit banks.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

## Section 4 Leasing companies

Article L. 571-13. - The fact of any individual, either directly or on behalf of a company, engaging in the activities indicated in Article L. 515-2 without complying with the provisions of Part I of this Book or of its implementing provisions, shall incur the penalties referred to in Article L. 571-3.

## Section 5 Financial holding companies and mixed financial holding companies

*Part Amended by Order No. 2004-1201 of 12 November 2004 Art. 7 Official Journal of 16 November 2004*

Article L. 571-14. - The fact of the senior managers of a financial holding company or of a mixed financial holding company failing to draw up consolidated accounts pursuant to Article L. 517-5 or L. 517-9 shall incur a fine of fifteen thousand euros.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

*Amended by Order No. 2004-1201 of 12 November 2004 Art. 7 Official Journal of 16 November 2004*

## Section 6 Intermediaries in banking transactions

Article L. 571-15. - The fact of any individual violating a prohibition referred to in Article L. 519-1 and in the first sentence of Article L. 519-2 shall be sentenced to two years' imprisonment and payment of a fine of thirty thousand euros.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 76 Official Journal of 7 May 2005*

Article L. 571-16. - The fact of any intermediary in banking transactions and in payment services failing to meet the obligation instituted by Article L. 519-4 shall incur a penalty of one year's imprisonment and a fine of fifteen thousand euros.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

## Chapter II Payment service providers and money changers

*Part Amended by Order No. 2009-866 of 15 July 2009 Art. 14 Official Journal of 16 July 2009*

### Section 1 Money changers

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 14 Official Journal of 16 July 2009*

Article L. 572-1. - The fact of any individual, acting on his own behalf or on behalf of a legal entity, violating a prohibition referred to in Article L. 524-4 shall incur a term of imprisonment of two years and payment of a fine of thirty thousand euros.

The fact of any entity violating the prohibition stipulated in Article L. 524-5 shall incur the same sentence.

The fact of any individual or legal entity subject to the obligation to make a report referred to in paragraph II of Article L. 524-2 failing to do so or providing inaccurate information to the Autorité de Contrôle Prudentiel shall incur a term of imprisonment of one year and a fine of fifteen thousand euros.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 3 Official Journal of 31 January 2009*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 10 Official Journal of 16 July 2009*

*Amended by Act No. 2009-888 of 22 July 2009 Art. 9 Official Journal of 24 July 2009*

Article L. 572-2. - The fact of any individual, acting on his own behalf or on behalf of a legal entity, whose normal business activity entails manual foreign exchange transactions failing to respond, after service of a formal letter of notice, to requests for information from the Autorité de Contrôle Prudentiel, or obstructing the performance of the latter's supervisory duties in whatever way or providing it with inaccurate information, shall incur the penalties referred to in Article L. 571-4.

**Article L. 572-3.** - The provisions of Article L. 571-2 shall apply to proceedings related to the offences referred to in Articles L. 572-1 and L. 572-2.

Article L. 572-4. - A sentence of six months' imprisonment and a fine of seven thousand five hundred euros shall be incurred by anyone who opposes the exercising by customs officers of the powers vested in them by Article L. 524-7.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 10 Official Journal of 16 July 2009*

*Amended by Act No. 2009-888 of 22 July 2009 Art. 9 Official Journal of 24 July 2009*

## Section 2 Payment service providers

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 14 Official Journal of 16 July 2009*

Article L. 572-5. – I. – Without prejudice to the provisions of Article L. 521-3, any violation of the prohibition stipulated in Article L. 521-2 shall incur a sentence of three years' imprisonment and a fine of three hundred and seventy-five thousand euros.

II. – Individuals guilty of an offence referred to paragraph 1 above shall also incur the following additional penalties:

1. Forfeiture of civic, civil and family rights pursuant to the terms set forth in Article 131-26 of the Criminal Code;

2. Disqualification, pursuant to the terms set forth in Article 131-27 of the Criminal Code, from public office or from engaging in the professional or corporate activity in connection with which the offence was committed, for a maximum period of five years;

3. Closure, for a maximum period of five years, of one, some or all of the firm's facilities used to commit the criminal acts;

4. Confiscation of the material object which was, or was intended to be, used to commit the offence, or the object which is the result thereof, excluding objects likely to be returned;

5. Posting or publication of the decision handed down, as provided for in Articles 131-35 or 131-39 of the Criminal Code.

III. - Legal entities declared criminally liable for the offence referred to in paragraph I of this Article under the conditions set forth in Article 121-2 of the Criminal Code shall incur:

1. A fine as indicated in Article 131-38 of the Criminal Code.

The penalties referred to in Article 131-39 of said code.

The disqualification referred to in paragraph 2 of Article 131-39 of the Criminal Code relates to the activity in connection with which the offence was committed.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 14 Official Journal of 16 July 2009*

Article L. 572-6. – The violation of a prohibition stipulated in Article L. 521-4 shall incur a penalty of three years' imprisonment and a fine of three hundred and seventy-five thousand euros.

The court may also order the posting or the publication of the decision handed down, as determined in Article 131-39 of the Criminal Code.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 14 Official Journal of 16 July 2009*

Article L. 572-7. – Nonobservance of professional secrecy by the individuals referred to in paragraph I of Article L. 522-19 shall be sanctioned by the penalties referred to in Articles 226-13 and 226-14 of the Criminal Code.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 14 Official Journal of 16 July 2009*

Article L. 572-8. - The fact of any senior manager of a credit institution, or of a legal entity or subsidiary referred to in Article L. 612-26, failing to respond, after service of a formal letter of notice, to requests for information from the Autorité de Contrôle Prudentiel, or obstructing the performance of the latter's supervisory duties in whatever way or providing it with inaccurate information, shall incur a penalty of one year's imprisonment and a fine of fifteen thousand euros.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 14 Official Journal of 16 July 2009*

Article L. 572-9. - The fact of the senior managers of a credit institution failing to draw up an inventory, a set of annual accounts and a management report for each financial year as determined in Article L. 522-19, shall incur a fine of fifteen thousand euros.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 14 Official Journal of 16 July 2009*

Article L. 572-10. – The fact of the senior managers of a payment institution failing to appoint the institution's statutory auditors or not inviting them to any General Meeting shall incur a penalty of two years' imprisonment and a fine of thirty thousand euros.

The fact of any senior manager of a credit institution or any individual in the service of such an institution obstructing the statutory auditors' verifications or inspections or refusing to provide them, on the spot, with any document conducive to the performance of their duties, including any contracts, books, accounting records and minute books, shall incur a penalty of five years' imprisonment and a fine of seventy-five thousand euros.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 14 Official Journal of 16 July 2009*

Article L. 572-11. - The fact of the senior managers of a credit institution failing to draw up the consolidated accounts pursuant to Article L. 522-19 shall incur a fine of fifteen thousand euros.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 14 Official Journal of 16 July 2009*

Article L. 572-12. - The fact of the senior managers of a payment institution failing to draw up the consolidated accounts pursuant to Article L. 522-19 shall incur a fine of fifteen thousand euros.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 14 Official Journal of 16 July 2009*



## Chapter III Provisions relating to investment service providers and financial investment advisors

*(Part LSF 2003-706 Art. 57)*

### Section 1 Provisions relating to investment service providers

*(Part LSF 2003-706 Art. 57)*

**Article L. 573-1. - I .** - The fact, for any individual, of providing investment services to third parties as part of his normal business activity without having been authorised to do so as provided for in Article L. 532-1 or without being included among the individuals referred to in Article L. 531-2 shall incur a penalty of three years' imprisonment and a fine of three hundred and seventy-five thousand euros.

II. - Individuals guilty of the offence referred to in paragraph I shall also incur the following additional penalties::

1. Forfeiture of civic, civil and family rights pursuant to the terms set forth in Article 131-26 of the Criminal Code;

2. Disqualification, pursuant to the terms set forth in Article 131-27 of the Criminal Code, from public office or from engaging in the professional or corporate activity in connection with which the offence was committed, for a maximum period of five years;

3. Closure, for a maximum period of five years, of one, some or all of the firm's facilities used to commit the criminal acts;

4. Confiscation of the material object which was, or was intended to be, used to commit the offence, or the object which is the result thereof, excluding objects likely to be returned;

5. Posting or publication of the decision handed down, as provided for in Article 131-39 of the Criminal Code.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

*Amended by Order No. 2007-1490 of 18 October 2007 Art. 4 Official Journal of 19 October 2007*

**Article L. 573-1-1.** – The fact, for any senior manager of an investment service provider other than a portfolio management company or of one of the legal entities or subsidiaries referred to in Article L. 612-26 or for any senior manager of a market undertaking, or for a member of the clearing houses or of an entity authorised to provide custody or administration of financial instruments, of failing to respond, after service of a formal letter of notice, to requests for information from the Autorité de Contrôle Prudentiel, or obstructing performance of the latter's supervisory role in whatever way or providing it with inaccurate information, shall incur a penalty of one year's imprisonment and a fine of fifteen thousand euros.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 5 Official Journal of 31 January 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 5 Official Journal of 22 January 2010*

**Article L. 573-2.** - The fact of any individual disregarding one of the incapacities stipulated in Article L. 531-11 shall incur a penalty of three years' imprisonment and a fine of three hundred and seventy-five thousand euros.

The court may also order the posting or the publication of the decision handed down, as determined in Article 131-39 of the Criminal Code.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

**Article L. 573-2-1.** - The fact of the individuals referred to in Article 531-12 disregarding professional secrecy shall incur the penalties referred to in Article 226-13 of the Criminal Code.

*Inserted by Act No. 2008-776 of 4 August 2008 Art. 154 Official Journal of 5 August 2008*

**Article L. 573-3.** - The fact of the senior managers of an investment firm failing to draw up an inventory, a set of annual accounts and a management report for each financial year as determined in Article L. 533-5, shall incur a fine of fifteen thousand euros.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

*Amended by Order No. 2007-1490 of 18 October 2007 Art. 4 Official Journal of 19 October 2007*

**Article L. 573-4.** - The fact of the senior managers of an investment firm failing to give effect to the appointment of the firm's statutory auditors or not inviting them to any General Meeting shall incur a penalty of two years' imprisonment and a fine of thirty thousand euros.

The fact of the senior managers of an investment firm or of any individual in the service of such a firm obstructing the statutory auditors' verifications or inspections or refusing to provide them, on the spot, with any document conducive to the performance of their duties, including any contracts, books, accounting records and minute books, shall incur a penalty of five years' imprisonment and a fine of seventy-five thousand euros.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

**Article L. 573-5.** - The fact of the senior managers of an investment firm failing to publish the firm's annual accounts as determined in Article L. 533-5 shall incur a fine of fifteen thousand euros.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

*Amended by Order No. 2007-1490 of 18 October 2007 Art. 4 Official Journal of 19 October 2007*

**Article L. 573-6.** - The fact of the senior managers of an investment firm failing to draw up the consolidated accounts pursuant to Article L. 533-5 shall incur a fine of fifteen thousand euros.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

*Amended by Order No. 2007-1490 of 18 October 2007 Art. 4 Official Journal of 19 October 2007*

**Article L. 573-7.** - Legal entities declared criminally liable under the conditions set forth in Article 121-1 of the Criminal Code for the offences indicated in Articles L. 573-1 to L. 573-6 shall, in addition to the fine referred to in Article 131-38 of the Criminal Code, incur the penalties referred to in Article 131-39 of said code.

The disqualification referred to in paragraph 2 of Article 131-39 of the Criminal Code relates to the activity in connection with which the offence was committed.

*Amended by Act No. 2009-526 of 12 May 2009 Art. 125 Official Journal of 13 May 2009*

Article L. 573-8. - The fact of any individual or legal entity failing to meet the obligations imposed by Articles L. 550-3 and L. 550-4 shall incur a penalty of five years' imprisonment and a fine of eighteen thousand euros.

The fact of the manager failing to comply with the provisions of Article L. 550-5 shall incur a penalty of two years' imprisonment and a fine of nine thousand euros.

The fact of the statutory auditor, either in his own name, or in his capacity as a partner in an auditing firm, giving or confirming untruthful information concerning the documents referred to in Article L. 550-4 or not revealing any criminal acts he was aware of to the Public Prosecutor, shall incur a penalty of five years' imprisonment and a fine of eighteen thousand euros.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

## Provisions relating to financial investment advisors

*(Part LSF 2003-706 Art. 57)*

Article L. 573-9. - The following acts shall incur the penalties imposed by Article 313-1 of the Criminal Code:

1 The fact of any individual or legal entity acting as a financial investment advisor as described in Article L. 541-1 without meeting the conditions set forth in Articles L. 541-2 to L. 541-5;

3 The fact of any individual or legal entity working as a financial investment advisor receiving funds from his clients in violation of the prohibition imposed by Article L. 541-6.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 57 II Official Journal of 2 August 2003*

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 8 Official Journal of 7 May 2005*

Article L. 573-10. - Individuals guilty of one of the offences referred to in Article L. 573-9 shall also incur the following additional penalties:

1. Forfeiture of civic, civil and family rights pursuant to the terms set forth in Article 131-26 of the Criminal Code;

2. Disqualification, pursuant to the terms set forth in Article 131-27 of said code, from public office or from engaging in the professional or corporate activity in connection with which the offence was committed, for a maximum period of five years;

3. Posting or publication of the decision handed down, as provided for in Article 131-35 of said code.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 57 II Official Journal of 2 August 2003*

Article L. 573-11. - Legal entities declared criminally liable under the conditions set forth in Article 121-2 of the Criminal Code for the offences indicated in Article L. 573-9, shall, in addition to the fine referred to in Article 131-38 of the Criminal Code, incur the penalties referred to in Article 131-39 of said code.

The disqualification referred to in paragraph 2 of Article 131-39 of the Criminal Code relates to the activity in connection with which, or in parallel with which, the offence was committed.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 57 II Official Journal of 2 August 2003*

*Amended by Act No. 2009-526 of 12 May 2009 Art. 125 Official Journal of 13 May 2009*

## Chapter IV Provisions relating to the prevention of money laundering terrorist financing

*Part Amended by Act No. 2006-64 of 23 January 2006 Art. 23 Official Journal of 24 January 2006*

Article L. 574-1. - The fact of disregarding the prohibition on disclosure referred to in Article L. 561-19 and in paragraph II of Article L. 561-26 shall incur a fine of twenty-two thousand five hundred euros.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

*Amended by Act No. 2001-420 of 15 May 2001 Art. 33 II Official Journal of 16 May 2001*

*Amended by Article 70 of Act No. 2004-130 of 11 February 2004 (OJ No. 36 of 12 February 2004)*

*Replaced by Order No. 2009-104 of 31 January 2009 Art. 6 Official Journal of 31 January 2009*

Article L. 574-2. - The penalties imposed by Article 226-13 of the Criminal Code shall apply to whoever disregards the prohibition referred to in the second paragraph of Article L. 561-29, without prejudice to the provisions of Article 226-14 of the Criminal Code.

*Amended by Order No. 2009-104 of 31 January 2009 Art. 6 Official Journal of 31 January 2009*

Article L. 574-3. - The fact of a senior manager or an employee of a financial institution or of an entity referred to in Article L. 562-3, or any individual or legal entity against whom/which a freezing or prohibition measure has been applied pursuant to Chapter II of Part VI of this Book, evading the resultant obligations or obstructing their implementation shall incur the penalties imposed by Article 459 of the Customs Code.

The provisions relating to the investigation of offences, legal proceedings, disputes and the prevention of offences under Parts II and XII of the Customs Code, without prejudice to Articles 453 to 459 of said code, shall also be applicable.

*Inserted by Act No. 2006-64 of 23 January 2006 Art. 23 Official Journal of 24 January 2006*

*Amended by Order No. 2009-104 of 31 January 2009 Art. 6 Official Journal of 31 January 2009*

Article L. 574-4. - The fact of the individuals and legal entities referred to in paragraphs 8, 9, 10 and 15 of Article L. 561-2 failing to respond, after service of a formal letter of notice, to requests for information from the administrative authority responsible for inspection referred to in paragraph II of Article L. 561-36 or obstructing the performance of the latter's supervisory duties in whatever way or knowingly providing it with inaccurate information, shall incur a term of imprisonment of one year and a fine of fifteen thousand euros.

*Inserted by Order No. 2009-104 of 31 January 2009 Art. 6 Official Journal of 31 January 2009*

# BOOK VI BANKING INSTITUTIONS AND OTHER FINANCIAL INSTITUTIONS

## PART I COMPETENT INSTITUTIONS FOR REGULATION AND SUPERVISION

*Part amended by Order No. 2009-866 of 15 July 2009 Art. 15 Official Journal of 16 July 2009 and Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 20103333*

### Chapter I Regulations

*(Title Art. 28 LSF (Loi de Sécurité Financière – Financial Security Act) 2003-706)*

*(Sections deleted LSF 2003-706 Art. 48)*

Art. L. 611-1. - The Minister for the Economy lays down the rules for credit institutions relating, inter alia, to:

1. The amount of the credit institutions' capital and the circumstances in which direct or indirect equity interests in said institutions and in the financial institutions referred to in Article L. 511-21 which directly or indirectly hold an effective controlling interest in one or more credit institutions may be acquired, increased or sold;

2. The conditions for establishing networks;

3. The circumstances in which said institutions may acquire equity interests;

4. The conditions applicable to the transactions that credit institutions or their agents may carry out, particularly in their relations with their clients and also with regard to the rules pertaining to competition;

5. Organisation of the common services;

6. The management standards credit institutions must comply with in order to ensure their liquidity, their solvency and the balance of their financial structure, as well as the circumstances in which said standards are applicable on a consolidated basis, including the possibility of there being no parent institution having its registered office in France;

7. Publication of the information intended for the competent authorities;

8. The instruments and rules of credit, without prejudice to the tasks entrusted to the European System of Central Banks by Article 105, paragraph 2, of the Founding Treaty of the European Community;

9. The rules relating to the protection of depositors referred to in Article L. 312-4;

10. The rules applicable to the accounting organisation, the monitoring and security mechanisms in the computing sphere and the internal auditing procedures.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 28 II 1, 2, Art. 48 II 2 Official Journal of 2 August 2003*

*Amended by Order No. 2004-1201 of 12 November 2004 Art. 9 Official Journal of 16 November 2004*

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 77 Official Journal of 7 May 2005*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 15 Official Journal of 16 July 2009*

Art. L. 611-1-1. – The Minister for the Economy lays down the rules for payment institutions relating, inter alia, to:

1 The amount of the payment institutions' capital;

2 The criteria that determine whether an amendment to the conditions of approval issued to a payment institution shall be subject, as applicable, to prior authorisation from the Autorité de Contrôle Prudentiel (ACP), a declaration or a notification;

3 The conditions applicable to the transactions that payment institutions or their agents may carry out, particularly in their relations with their clients and also with regard to the rules pertaining to competition;

4 The arrangements for protecting the clients' funds;

5 The manner in which decisions to withdraw approval shall be made known to the public and the circumstances in which the funds received from users of payment services shall be returned to them or transferred to another credit institution or another approved payment institution or to the Caisse des Dépôts et Consignations;

6. The management standards that credit institutions must comply with in order to ensure their liquidity, their solvency and the balance of their financial structure, as well as the circumstances in which said standards are applicable on a consolidated basis, including the possibility of there being no parent institution having its registered office in France;

7. The rules applicable to the accounting organisation, the monitoring and security mechanisms in the computing sphere and the internal auditing procedures.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 15 Official Journal of 16 July 2009*

Art. L. 611-1-2. – The Minister for the Economy lays down the rules for the agents of the payment service providers relating, inter alia, to:

1 The conditions of respectability and aptitude;

2 The registration procedures referred to in Article L. 523-1.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 15 Official Journal of 16 July 2009*

Art. L. 611-2. – In the event of any violation of the rules laid down by the Minister regarding application of the provisions of paragraph 1 of Article L. 611-1, and without prejudice to the provisions of Article L. 233-14 of the Commercial Code, the Public Prosecutor, the Autorité de Contrôle Prudentiel or any shareholder may ask the court to suspend exercise of the voting rights attached to the shares or membership shares of credit institutions or financial institutions which are irregularly held, either directly or indirectly, until the situation is regularised.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 28 II 1, 2, 3, Art. 48 II 2 Official Journal of 2 August 2003*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

Art. L. 611-3. – The Minister for the Economy shall determine, after consultation with the Autorité des Marchés Financiers (AMF) and the Comité Consultatif de la Législation et de la Réglementation Financières (CCLRF), and without prejudice to the duties performed by the Autorité des Marchés Financiers in regard to the portfolio management companies referred to in Article L. 532-9, the regulations applicable to the investment service providers described in Article L. 531-1 and, where applicable, the market undertakings, legal entities having as their primary or sole activity the clearing of financial instruments and the legal entities having as their primary or sole business activity the custody and administration of financial instruments and relating to:

1. The amount of the minimum capital requirement, commensurate with the services the investment service provider intends to offer;

2. The standards referred to in paragraphs 5, 6, 7 and 10 and, where applicable, paragraph 8, of Article L. 611-1.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 28 II 1, 4, Art. 48 II 2 Official Journal of 2 August 2003*

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 78 Official Journal of 7 May 2005*

*Amended by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

Art. L. 611-3-1. — The Minister for the Economy may, after consultation with the Comité Consultatif de la Législation et de la Réglementation Financières and at the request of one or more of the bodies representing financial sector professionals that are included in a list approved by the Minister, approve by decree the conduct of business rules they have drawn up in relation to the marketing of the financial instruments referred to in Article L. 211-1, **the banking transactions referred to in Article L. 311-1, the payment services referred to in Article L. 314-1**, and the savings products referred to in Part II of Book II of this code, as well as individual insurance contracts having surrender values, capital redemption policies and the contracts referred to in Articles L. 132-5-3 and L. 441-1 of the Insurance Code.

*Inserted by Order No. 2008-1271 of 5 December 2008 Art. 1 Official Journal of 6 December 2008*

*Amended by Act No. 2010-1249 of 23 October 2010 Art. 36 Official Journal of 23 October 2010*

Art. L. 611-4. – The Minister for the Economy shall also determine:

1. The conditions under which investment firms may carry out the transactions referred to in paragraph 2 of Article L. 321-2;

2. The circumstances in which investment firms other than portfolio management companies may carry out the transactions referred to in Article L. 531-5;

3. The circumstances in which direct or indirect equity interests may be acquired, increased or sold in investment firms other than portfolio management companies.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 28 II 1, Art. 46 VI 1, Art. 48 II 2 Official Journal of 2 August 2003*

*Amended by Order No. 2009-897 of 24 July 2009 Art. 1 Official Journal of 25 July 2009*

Art. L. 611-5. – The orders of the Minister for the Economy and the regulations of the Autorité des Normes Comptables (French Accounting Standards Authority) may

differ according to the legal status of credit institutions, payment institutions or investment firms, the size of their networks or the characteristics of their business.

They may, where necessary, lay down conditions for granting exceptional and temporary individual exemptions.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 28 II 1, 5, Art. 48 II 2 Official Journal of 2 August 2003*

*Amended by Order No. 2009-79 of 22 January 2009 Art. 6 Official Journal of 23 January 2009*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 15 Official Journal of 16 July 2009*

Art. L. 611-6. – Orders relating to the following shall not be submitted to the Comité Consultatif de la Législation et de la Réglementation Financières for an opinion:

1. With reference to the Mutual or Cooperative Banks, determination of the conditions of admission to membership and the resultant limitations in the scope of said institutions' activities;

2. Determination of the remits of the specialised financial institutions, the Caisses d'Épargne et de Prévoyance and the Municipal Credit Banks;

3. The principles applicable to banking transactions linked to Government aid;

4. The rules applicable to investment services provided by investment firms and credit institutions.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 28 II 1, 6, Art. 48 II 2 Official Journal of 2 August 2003*

Art. L. 611-7. – The regulations of the Comité de la Réglementation Bancaire et Financière in force prior to Financial Security Act No. 2003-706 of 1 August 2003 may be amended or repealed by order of the Minister for the Economy as provided for in Article L. 611-1.

*Repealed by LSF 2003-706 Art. 48 and reinserted by Act No. 2006-387 of 31 March 2006 Art. 26 Official Journal of 1 April 2006*

Art L. 611-8 to L. 611-9: *Repealed by LSF 2003-706 Art. 48*

## Chapter II The Autorité de Contrôle Prudentiel

*Heading amended by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

### Section 1 Duties and scope

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-1. – I. – The Autorité de Contrôle Prudentiel, an independent administrative authority, ensures the stability of the financial system and protection of the clients, the insured, and the members and beneficiaries of the entities subject to its supervision.

Said authority supervises said entities' compliance with the provisions of the Monetary and Financial Code, as well as the regulatory provisions laid down for its implementation, the Insurance Code, Book IX of the Social Security Code, the Mutuality Code, Book III of the Consumer Code, the approved conduct of business rules and any other legislative or regulatory



provision which, if disregarded, results in non-compliance with the aforementioned provisions.

II. – It is responsible for:

1 Considering the requests for individual authorisations or exemptions that are sent to it and making the decisions referred to in the laws and regulations applicable to the entities subject to its supervision;

2 Carrying out supervision, at all times, of the financial situation and operational arrangements of the entities referred to in paragraph I of Article L. 612-2; it shall monitor, inter alia, their compliance with the solvency requirements and also, for the entities referred to in points 1 to 4 of subparagraph A of paragraph I of Article L. 612-2, the rules relating to the maintenance of their liquidity and, for the entities referred to points 1 to 3, 5, 7 and 8 of subparagraph B of paragraph I of said article, shall ensure that they are indeed at all times able to meet the commitments they have assumed in respect of their insured parties, members, beneficiaries or reinsured firms and that they effectively do so;

3 Ensuring that the entities subject to its supervision comply with the rules intended to protect their clients deriving, inter alia, from any law or regulation or any conduct of **business rules approved at the request of a professional body, as well as the good practices of their profession that it approves or recommends**, and likewise the suitability of the means and procedures they implement for said purpose; it shall also verify the adequacy of the means and procedures that said entities implement in order to comply with Book I of the Consumer Code.

For the performance of its duties, the Autorité de Contrôle Prudentiel has, in respect of the entities referred to in Article L. 612-2, the power to supervise, the power to take public order administrative measures and the power to sanction. It may, moreover, make known to the public any information that it considers necessary for the performance of its duties, notwithstanding the professional secrecy referred to in Article L. 612-17.

III. – In the performance of its duties, the Autorité de Contrôle Prudentiel shall take into account the objectives of financial stability throughout the European Economic Area and convergent implementation of the domestic and Community provisions, taking due account of the good practices and recommendations arising from the Community supervision provisions. It shall cooperate with the competent authorities of the other States. Within the European Economic Area in particular, it shall lend its support to the supervisory structures for cross-border groups.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 23 October 2010 Art. 36 Official Journal of 23 October 2010*

Art. L. 612-2. – I. – The following are supervised by the Autorité de Contrôle Prudentiel:

A. – In the banking, payment services and investment services sector:

1 Credit institutions;

2 The following entities:

a) Investment firms other than portfolio management companies;

b) Market undertakings;

c) Members of the clearing houses;

d) The entities authorised to provide the custodianship or administration services for financial instruments referred to in paragraphs 4 and 5 of Article L. 542-1;

3 Payment institutions;

4 Financial holding companies and mixed financial holding companies;

5 Money changers;

6 The associations and foundations referred to in paragraph 5 of Article L. 511-6;

7 The legal entities referred to in Article L. 313-21-1.

The ACP's supervision shall be applied to the investment services provided by the entities referred to in paragraphs 1 and 2 without prejudice to the competence of the Autorité des Marchés Financiers as regards supervision of the conduct of business rules and other professional obligations.

The ACP may request the opinion of the Banque de France in connection with its supervision of the entities referred to in paragraph 3 with regard to the duty to monitor the proper operation and the security of the payment systems conferred on it by paragraph I of Article L. 141-4. In this context, the Banque de France may bring any information to the attention of the ACP.

B. – In the insurance sector:

1 The companies carrying out the direct insurance business referred to in Article L. 310-1 of the Insurance Code **and those referred to in the last paragraph of said article**;

2 Companies carrying out reinsurance business whose registered office is in France;

3 The mutual societies and unions governed by Book II of the Mutuality Code and the unions that manage the federal guarantee systems referred to in Article L. 111-6 of the Mutuality Code, as well as the mutual group unions referred to in Article L. 111-4-2 of said code;

4 The mutual societies and unions referred to in Book I that manage the settlements and contracts on behalf of the mutual societies and unions governed by Book II, solely for the purposes of Part VI of Book V of this code;

5 The provident institutions, unions and joint provident groups governed by Part III of Book IX of the Social Security Code;

6 The companies belonging to insurance groups and those belonging to the mixed insurance groups referred to in Article L. 322-1-2 of the Insurance Code;

7 The universal guarantee fund for tenancy risks referred to in Article L. 313-20 of the Housing and Construction Code;

8 The securitisation vehicles referred to in Article L. 310-1-2 of the Insurance Code.

II. – The ACP may impose its supervision on:

1 Any individual or legal entity who/which has received **from an institution** carrying out insurance transactions an authorisation to carry out underwriting or management activities or to underwrite a group insurance contract or who/which carries out, in whatever capacity, an insurance or reinsurance intermediation activity referred to in Article L. 511-1 of the Insurance Code;

2 Any individual or legal entity who/which mediates, directly or indirectly, between an entity referred to in subparagraph 3 or 4 of paragraph B and an individual who wishes to join, or is already a member of, said entity;

3 Any intermediary in banking transactions and payment services.

III. – The Autorité de Contrôle Prudentiel has responsibility for monitoring compliance by the entities referred to in paragraphs I and II operating in France under freedom to provide services or freedom of establishment with the provisions applicable to them, taking account of the supervision carried out by the competent authorities of the Member State in which their registered office is located which have sole responsibility, inter alia, for overseeing their financial situation, operating conditions and solvency, as well as their ability to meet the commitments they have assumed in respect of their insured parties, members, beneficiaries and reinsured companies.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 12 Official Journal of 23 October 2010*

Art. L. 612-3. – The following are not subject to the ACP's supervision:

1 The management transactions of a statutory sickness and maternity and accidents at work and occupational diseases insurance scheme referred to in Part IV of Book IV of the Insurance Code;

2 The transactions of a supplementary pension scheme carried out by the institutions governed by Book IX of the Social Security Code that relate to inter-occupational and general compensation;

3 The management transactions of a statutory sickness and maternity insurance scheme and those associated with activities and services carried out on behalf of the State or of other public authorities referred to in subparagraph 4 of paragraph I of Article L. 111-1 of the Mutuality Code.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

## Section 2 Composition and operations

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

### Subsection 1 Composition

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-4. – The Autorité de Contrôle Prudentiel has a Board and an Enforcement Commission.

Except as otherwise provided, the tasks entrusted to the Autorité de Contrôle Prudentiel shall be performed by the Board, which sits in plenary session, in restricted session, as a Sectoral Sub-Commission or, where necessary, as a specialised commission.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-5. – The Board of the Autorité de Contrôle Prudentiel is composed of **nineteen** members:

1 The Governor of the Banque de France, or the Deputy Governor he has designated to represent him, as Chairman;

**1 bis The Chairman of the Autorité des Marchés Financiers;**

**1 ter Two members appointed for a term of five years on account of their competence in financial and legal matters and their experience in insurance and banking, one by the Chairman of the National Assembly and the other by the Chairman of the Senate;**

2 The Chairman of the Autorité des Normes Comptables;

3. A councillor of the Conseil d'Etat proposed by the Vice-President of that body;

4. A justice of the court of cassation proposed by the chief justice of that court;

5. A senior member of the court of auditors (Cour des comptes) designated by the auditor general;

6 A Vice-Chairman with experience in insurance matters and two other members, all three chosen on account of their competence in the spheres of client protection or quantitative and actuarial techniques or in other fields relevant to the performance of the ACP's duties;

7 Four members chosen on account of their competence in the spheres of insurance, mutual societies, provident societies or reinsurance;

8 Four members chosen on account of their competence in the fields of banking transactions, payment services or investment services.

The members of the ACP's Board referred to in paragraphs 3 to 8, with the exception of the Vice-Chairman of the Autorité, are appointed for a term of five years by order of the Minister for the Economy.

The Vice-Chairman of the Autorité de Contrôle Prudentiel is appointed for a term of five years by a joint order of the Ministers for the Economy, Social Security and the Mutual Societies **issued after seeking the opinions of the Finance Commissions of the National Assembly and of the Senate. Said commissions' opinions shall be deemed favourable upon expiry of a period of thirty days commencing on the date of receipt of the opinion request.**

The members may be reappointed once. They must not be aged above seventy years on the day of their appointment or reappointment.

In the event of a Board member's seat becoming vacant for whatever reason and being duly noted by the Chairman, it shall be filled for the unexpired portion of the former member's term of office. A term of office of less than two years shall not be taken into account for application of the reappointment rule.

A Board member belonging to the categories referred to in paragraphs **1 ter and 3 to 8** may be removed from office only through the appointments procedure, where the majority of the other members of the Board find that he is no longer able to sit on the Board on account of an incapacity or a serious breach of his obligations preventing him from completing his term of office.

**The members of the Board of the Autorité de Contrôle Prudentiel enumerated in paragraphs 1 ter and 3 to 8 shall receive compensation under a scheme determined by decree.**

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 14 Official Journal of 23 October 2010*

**NB (1): The members referred to in paragraph 1 ter of Article L. 612-5 of the Monetary and Financial Code shall be appointed within three months of the promulgation of**

**this Act for the period ending upon the next reappointment of the Board of the Autorité de Contrôle Prudentiel.**

Art. L. 612-6. – The restricted session of the Board is composed of eight members:

1 The Governor of the Banque de France or the Deputy Governor appointed to represent him, as Chairman;

2 The Vice-Chairman;

3 Two members appointed by the Board from among the members referred to in paragraph 7 of Article L. 612-5;

4 Two members appointed by the Board from among the members referred to in paragraph 8 of Article L. 612-5;

5 Two members appointed by the Board from among the members referred to in paragraphs 2 to 6 of Article L. 612-5.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-7. – The Board creates two Sectoral Sub-Commissions within itself:

1 The Sectoral Sub-Commission for insurance is composed of eight members: the Vice-Chairman, the Governor of the Banque de France or the Deputy Governor appointed to represent him, the four members referred to in paragraph 7 of Article L. 612-5 and two members appointed by the Board from among the members referred to in paragraphs 2 to 6 of the aforementioned article;

2 The Sectoral Sub-Commission for banking is composed of eight members: the Governor of the Banque de France or the Deputy Governor appointed to represent him, the Vice-Chairman, the four members referred to in paragraph 8 of Article L. 612-5 and two members appointed by the Board from among the members referred to in paragraphs 2 to 6 of the aforementioned article.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-8. – The Board may create one or more Specialised Commissions within itself and empower them to make decisions of individual scope, as provided for in a decree issued following consultation with the Conseil d'Etat.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-9. – The Enforcement Commission is composed of **six** members:

1 **Two councillors of the Conseil d'Etat designated** by the Vice-President of that body, and a justice of the court of cassation, designated by the chief justice of that court;

2 Three members chosen on account of their competence in matters relevant to the performance of the ACP's duties, appointed by order of the Minister for the Economy.

Deputies shall be appointed on the same bases.

The Vice-President of the Conseil d'Etat shall designate one of the two councillors of the Conseil d'Etat referred to in paragraph 1 to chair the Enforcement Commission.

The functions of a member of the Enforcement Commission are incompatible with those of a member of the Board.

The members of the Enforcement Commission shall be appointed for a term of five years. They may be reappointed once. They must not be aged above seventy years on the day of their appointment or reappointment.

In the event of an Enforcement Commission member's seat becoming vacant for whatever reason and being duly noted by the Chairman, it shall be filled for the unexpired portion of the former member's term of office. A term of office of less than two years shall not be taken into account for application of the reappointment rule.

A member of the Enforcement Commission may be removed from office only through the appointments procedure, where the majority of the other members of the Enforcement Commission find that he is no longer able to sit on the Board on account of an incapacity or a serious breach of his obligations preventing him from completing his term of office.

The compensation scheme for members of the commission is determined by decree.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 15 Official Journal of 23 October 2010*

NB: (Within three months of the promulgation of this Act, the Vice-President of the Conseil d'Etat shall appoint the additional councillor referred to in the second paragraph of Article L. 612-9 of the Monetary and Financial Code, who shall take up his duties on the date of entry into force of paragraph I of this article for the period ending upon the next reappointment of the Enforcement Commission of the Autorité de Contrôle Prudentiel.)

Art. L. 612-10. – Any member of the Board or of the Enforcement Commission of the ACP must inform the Chairman of the Autorité de Contrôle Prudentiel:

1 Of the interests he held during the two years preceding his appointment and those he currently holds or may come to hold;

2 Of the corporate, economic or financial functions he performed during the two years preceding his appointment and those he currently performs or may come to perform;

3 Of any remit within a legal entity he held during the two years preceding his appointment and those he currently holds or may come to hold;

Said information, as well as information concerning the Chairman, shall be made available to the members of the Board and of the Enforcement Commission of the Autorité de Contrôle Prudentiel.

No member of the Board or of the Enforcement Commission of the Autorité de Contrôle Prudentiel may deliberate or participate in their proceedings pertaining to a matter in which he himself or, where applicable, a legal entity in which he performs functions or holds a remit, or for which he acts as avocat or advisor, has an interest; nor may he participate in a deliberation concerning a matter in which he himself or, where applicable, a legal entity in which he performs functions or holds a remit, or for which he acts as avocat or advisor, has represented one of the parties involved during the two years preceding said deliberation.

No member of the Autorité de Contrôle Prudentiel's Board or of its Enforcement Commission may be an employee of, or hold a remit in, an entity subject to the ACP's supervision.

The Chairman of the Autorité de Contrôle Prudentiel shall take the appropriate measures to ensure compliance with the obligations and prohibitions deriving from this article.

The internal regulation of the Autorité de Contrôle Prudentiel determines the procedures for preventing conflicts of interest.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-11. – The Director General of the Treasury, or his representative, shall attend all the sessions of the Autorité de Contrôle Prudentiel, without voting rights. He shall not participate in the Enforcement Commission's deliberations.

The Social Security Director, or his representative, shall attend the meetings of the Sectoral Sub-Commission for Insurance, or the ACP's other sessions, without voting rights, where they deal with the institutions governed by the Mutuality Code or the Social Security Code. He shall not participate in the Enforcement Commission's deliberations.

**The Director General of the Treasury, the Social Security Director, or their representatives,** may, other than in relation to sanctions, request a second deliberation as provided for in a decree issued following consultation with the Conseil d'Etat.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

*Amended by le decree No. 2010-291 of 18 March 2010 Art. 2 Official Journal of 19 March 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 12 Official Journal of 23 October 2010*

## Subsection 2 Organisation

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-12. – I. – The Board in plenary session lays down the ACP's organisational and functional principles, its budget and its bylaws. It deals with any question of general scope common to the banking and insurance sectors and analyses the risks of those sectors in relation to the economic situation. It deliberates the priorities for supervision. **Each year, it draws up a report to the President of the Republic and to Parliament which is published in the Official Journal.**

Individual questions are dealt with by the Board in restricted session, by one of the two Sectoral Sub-Commissions or, where applicable, by a Specialised Commission created pursuant to Article L. 612-8.

Each Sectoral Sub-Commission is authorised to deal with individual questions and general questions specific to its sector.

The restricted session of the Board is authorised to deal with individual questions relating to the additional supervision of the regulated entities belonging to a financial conglomerate to examine the acquisitions, increases and disposals of equity interests likely to have a significant impact on the entities in the banking sector and likewise those in the insurance sector.

Taking into account, inter alia, their impact on financial stability, the Chairman of the Autorité de Contrôle Prudentiel, or the Vice-Chairman, may entrust the examination of questions of general scope relating to one of the two sectors to the plenary session of the Board and the individual questions relating to one of the two sectors to the restricted session of the Board.

II. – The Chairman of the Autorité de Contrôle Prudentiel determines the agenda of the various sessions of the Board. The agenda of the Sectoral Sub-Commission for insurance is

determined by the Chairman of the Autorité de Contrôle Prudentiel on a proposal from the Vice-Chairman.

**The Chairman of the Autorité de Contrôle Prudentiel shall be heard by the Finance Commissions of the two Assemblies (i.e. the National Assembly and the Senate) if they so request and may ask to be heard by them.**

III. – The Vice-Chairman chairs the Sectoral Sub-Commission for Insurance. In the event of the Vice-Chairman being unable to attend, the Governor or a Deputy Governor of the Banque de France shall chair the Sectoral Sub-Commission for Insurance.

The Governor of the Banque de France may delegate the chairmanship of the Board or of one of its sessions or Commissions to the Vice-Chairman. Where the Vice-Chairman presides, the Deputy Governor representing the Governor may participate in the deliberations.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 13 Official Journal of 23 October 2010*

Art. L. 612-13. – Each session of the ACP's Board may deliberate only if the majority of its members are present.

The decisions shall be taken on a majority of the votes cast. In the event of a tied vote, the Chairman of the session shall have a casting vote.

In an emergency duly declared by the Chairman of the Autorité de Contrôle Prudentiel, the ACP's session deciding the matter may, other than in relation to sanctions, give a ruling via a written consultation.

A decree issued following consultation with the Conseil d'Etat lays down the rules applicable to the procedure and the deliberations of the sessions of the Autorité de Contrôle Prudentiel and the circumstances in which they may, other than in relation to sanctions, give a ruling via teleconferencing.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-14. – I. – The ACP may create one or more consultative commissions.

A commission has been established to advise on the lists, the models, the frequency and the time limits for transmission of the documents and periodic information that must be submitted to the ACP.

The ACP designates the members of said commission, which is composed mainly of professionals from the banking and insurance sectors who are not members of the ACP.

The ACP may consult the Comité Consultatif du Secteur Financier.

A decree issued following consultation with the Conseil d'Etat determines the conditions and limits within which:

1 The Board may delegate authority to its Chairman or, if he is absent or unable to attend, to the Vice-Chairman or another member, to make individual decisions within his field of competence;

2 The Chairman of the ACP may delegate his signing authority in matters where the laws or regulations grant him specific competence.

3 Where exceptional circumstances warrant it, the Chairman of the ACP may make decisions, other than in relation to sanctions, that fall within the competence of the



ACP's sessions; he shall report to the Board thereon as soon as possible.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

### Subsection 3 Operations

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-15. – A Secretary General shall be appointed by order of the Minister for the Economy on a proposal from the Chairman of the Autorité de Contrôle Prudentiel.

A First Assistant Secretary General, reporting to him, shall be appointed by the Chairman of the ACP, with the agreement of the Vice-Chairman and the approval of the Ministers for the Economy, for Social Security and for the Mutual Societies. The First Assistant Secretary General shall have experience in insurance or banking which complements that of the Secretary General.

On a proposal from the Secretary General, the ACP's Board shall lay down the units' organisational principles, determine the ethical rules applicable to the staff and establish the general framework for the recruitment and employment of the staff pursuant to the provisions applicable to permanent staff and officials.

The Secretary General shall organise and manage the ACP's units. The Chairman of the ACP may delegate power to him to appoint the staff of the ACP's units.

The Secretary General may receive a delegation of powers from the Board under conditions and within limits laid down in a decree issued following consultation with the Conseil d'Etat.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-16. – I. – In the performance of the duties entrusted to the Autorité de Contrôle Prudentiel, the Chairman of the ACP is empowered to act on its behalf before any court.

II. – The Autorité de Contrôle Prudentiel may file a civil action at any stage in criminal proceedings pursuant to Chapters I to III of Part VII of Book V of this code and to the criminal provisions of the Insurance Code, the Mutuality Code and the Social Security Code.

III. – Decisions concerning the Board's competence may be challenged before the Conseil d'Etat on the grounds of abuse of authority within two months of their notification or publication.

IV. – The decisions handed down by the Enforcement Commission may be the subject of an administrative-law appeal before the Conseil d'Etat brought by the individuals or legal entities sanctioned and by the Chairman of the Autorité de Contrôle Prudentiel, with the agreement of the session of the Board that initiated notification of the statement of objections, within two months of such notification. Where an individual or legal entity summoned lodges an appeal, the Chairman of the ACP may, in the same way, lodge an appeal within two months of the Autorité de Contrôle Prudentiel being notified of the summoned party's appeal.

V. – A decree issued following consultation with the Conseil d'Etat determines the implementing provisions of this article.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-17. – I. – Whoever participates, or has participated, in the performance of the duties of the Autorité de Contrôle Prudentiel shall be bound by professional secrecy under the terms and subject to the penalties referred to in Article L. 641-1.

II. – Said secrecy may not be raised against:

1 A court acting within the framework of either a court-ordered liquidation procedure initiated against an entity subject to the supervision of the Autorité de Contrôle Prudentiel or criminal proceedings;

2 The Administrative Courts hearing a case relating to the activities of the Autorité de Contrôle Prudentiel;

3 A Board of Enquiry in the context of a hearing referred to in the fourth subparagraph of paragraph II of Article 6 of the Order of 17 November 1958 on the functions of Parliamentary Assemblies.

4 The court of auditors in relation to the inspections entrusted to it by the law.

III. – The information gathered in the cases referred to in subparagraph 4 of paragraph II is covered by professional secrecy as provided for in Paragraph I of this article.

IV. – The Autorité de Contrôle Prudentiel is authorised to forward to the Institut National de la Statistique et des Études Économiques and to the statistical units of the ministries for Social Security and for the Mutual Societies the data that is transmitted to it by the institutions subject to its supervision and which is relevant to the compilation of the public statistics, inter alia with regard to health, retirement and welfare. The information thus gleaned is covered by professional secrecy under the conditions applicable to the ACP.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

## Section 3 Operational Resources

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-18. – The Autorité de Contrôle Prudentiel has financial autonomy within the limits of the revenue from the contribution referred to in Article L. 612-20, the balance of which is carried forward each year, and from any additional allocation the Banque de France may grant it.

The Autorité de Contrôle Prudentiel draws up its budget on a proposal from the Secretary General. Said budget is a supplementary budget of the Banque de France.

At the close of each financial year:

1 The funds allocated to the supplementary budget of the Autorité de Contrôle Prudentiel in excess of its charges are allocated by the Banque de France to a "Contributions of the Autorité de Contrôle Prudentiel Carried Forward Account". With effect from such allocation, the amount concerned is no longer included in the calculation of the taxable profit of the Banque de France within the meaning of paragraph II of Article 38 quinquies A of the Code Général des Impôts (General Tax Code);

2 In the event of the charges of the Autorité de Contrôle Prudentiel exceeding the funds allocated to it, the Banque de France shall balance the supplementary budget of the Autorité de Contrôle Prudentiel by debiting the corresponding sum from the "Contributions of the Autorité de Contrôle Prudentiel Carried Forward Account". The sum thus debited shall be

included in the calculation of the taxable profit of the Banque de France within the meaning of paragraph II of Article 38 quinquies A of the Code Général des Impôts upon its allocation to the supplementary budget of the Autorité de Contrôle Prudentiel.

The Act of 10 August 1922 relating to the organisation of the supervision of the expenses incurred does not apply to the Autorité de Contrôle Prudentiel.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-19. – I. – The Autorité de Contrôle Prudentiel has the resources provided by the Banque de France.

The Secretary General of the ACP shall incur expenses on behalf of the ACP within the limits of its budget. It is empowered by the Banque de France to enter into contracts and issue invitations to tender under the terms and conditions applicable to the contracts awarded by the Banque de France.

II. – The human resources of the units of the Autorité de Contrôle Prudentiel consist of staff employed by the Banque de France.

The supervisory body for insurance is at the service of the Banque de France as provided for in a decree issued following consultation with the Conseil d'Etat.

The staff members' terms and conditions of employment are drawn up by the Board on a proposal from the Secretary General, without prejudice to the more favourable provisions applicable to the staff covered by the Statute of the Banque de France and, for officials, pursuant to the regulations, inter alia of a statutory nature, that apply to them.

The Secretary General determines the individual amounts of the remuneration of the staff members of the ACP's units within the general framework established by the Board.

The staff members of the ACP's units shall be subject to the ethical rules drawn up by the Board on a proposal from the Secretary General consistent with the ethical rules applicable to the staff of the Banque de France. Where appropriate, by reason of their participation in the functions of the Banque de France, they may be subject to the rules of the Statute of the Banque de France.

The units of the ACP constitute a distinct institution of the Banque de France within the meaning of Article L. 2327-1 of the Labour Code, as provided for in Article L. 142-9. The staff members of the units of the Autorité de Contrôle Prudentiel, regardless of their status, are entitled to vote in and stand for election to the bodies that represent the institution's staff, as provided for in the Labour Code. Said representative bodies exercise their competence in respect of all said staff, without prejudice to the competence of the joint administrative commission of the supervisory body for insurance.

III. – Measures to adapt the provisions of the third to sixth subparagraphs of paragraph II, as well as those of the company-level agreements applicable to the staff of the Banque de France, to the members of the supervisory body for insurance are determined in a decree issued following consultation with the Conseil d'Etat.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-20. – I. – Entities subject to the supervision of the Autorité de Contrôle Prudentiel pursuant to Article L. 612-2 shall be liable for a contribution for supervisory costs which shall be paid to the Banque de France in respect of their business carried out as of 1 January of each year.

Entities and organisations having their registered office in another State party to the European Economic Area Agreement conducting their business in France through the establishment of a branch or under freedom to provide services shall not be liable for said contribution.

Entities exempted from the approval referred to in Articles L. 321-1, L. 321-1-1 and L. 321-9 of the Insurance Code, Articles L. 931-4 and L. 931-4-1 of the Social Security Code and Articles L. 211-7 and L. 211-7-2 of the Mutuality Code are exempted from the contribution.

The Banque de France shall allocate all revenue from the contribution to the budget of the Autorité de Contrôle Prudentiel.

II. – The following provisions apply to the contribution's basis of calculation:

A. – For the entities referred to in subparagraphs 1, 2, 3 and 4 of paragraph A of Article L. 612-2, the basis shall consist of:

1 The minimum equity capital requirements that ensure that the hedge ratios referred to in Articles L. 511-41, L. 522-14 and L. 533-2 determined during the financial year corresponding to the previous calendar year will be met. The minimum equity capital requirements shall be assessed on a consolidated basis for the entities covered by Articles L. 511-41-2, L. 533-4-1, L. 517-5 and L. 517-9. No additional contribution on a corporate basis shall be paid by the aforementioned entities that belong to a group for which a consolidated basis is calculated. Other entities shall pay a contribution calculated on a corporate basis;

2 The presentation standards for the minimum capital that enables the requirements set forth in Articles L. 511-11 and L. 532-2 to be met, determined during the financial year corresponding to the previous calendar year where the equity capital requirements do not apply.

B. – For the companies referred to in paragraph B of Article L. 612-2, the basis is made up of the premiums or contributions issued and accepted during the financial year corresponding to the previous calendar year, including ancillary items associated with premiums, contributions, contract costs and settlements and policy costs, net of taxes, disposals and cancellations, for the financial year and for all the previous financial years, to which the variation for the total of the premiums or contributions still to be issued during the same financial year is added, net of disposals.

C. – In view of the specific supervisory arrangements they are subject to, the following entities shall pay a special contribution:

1 Money changers, the entities referred to in subparagraph B 4 of paragraph I of Article L. 612-2 and the entities referred to in subparagraph A of Article I which are not required to comply with a hedge ratio under Articles L. 511-41 and L. 533-2 or with minimum capital presentation standards under Articles L. 511-11 and L. 532-2, shall each pay a special contribution of between 500 euros and 1,500 euros determined by order of the Minister for the Economy **and, for the entities referred to in subparagraph B 4 of paragraph I of Article L. 612-2, by order of the Ministers for the Economy, the Mutual Societies and Social Security;**

2 The brokers and brokerage houses in insurance and reinsurance referred to in Article L. 511-1 of the Insurance Code and intermediaries in banking transactions and payment services, the State-approved non-profit associations and foundations referred to in paragraph 5 of Article L. 511-6 of this code and the legal entities referred to in Article L. 313-21-1 shall each pay a special contribution of between 100 euros and 300 euros determined by order of the Minister for the

Economy. Entities engaged in an insurance and reinsurance broking activity while also acting as an intermediary in banking transactions and payment services or another activity requiring a contribution to be paid to the Autorité de Contrôle Prudentiel shall pay a single contribution.

III. – The amount of the contribution referred to in subparagraphs II A and II B of this article shall be between:

1 0.40 and 0.80% for the entities referred to in subparagraph II A of this article. Said amount is determined by order of the Minister for the Economy;

2 0.06 and 0.18% for the companies referred to in subparagraph II B of this article. Said amount is determined by order of the Ministers for the Economy, the Mutual Societies and Social Security.

The contribution paid under this article cannot be below a minimum contribution, the amount of which, at between 500 euros and 1,500 euros, is determined by order of the Ministers for the Economy, the Mutual Societies and Social Security.

**The orders referred to in paragraph II and in this paragraph III shall be issued after consultation with the Board of the Autorité de Contrôle Prudentiel in plenary session.**

IV. – For the entities referred to in subparagraphs II A and II B of this article, the Autorité de Contrôle Prudentiel shall determine the contribution on the basis of the declarations they have provided in connection with the supervision of the hedge ratios referred to in Articles L. 511-41, L. 522-14 and L. 533-2, the presentation standards for the minimum capital required to comply with Articles L. 511-11 and L. 532-2 of this code and the solvency margin referred to in Article L. 310-12 of the Insurance Code.

V. – The contribution is collected in the following manner:

1 The Autorité de Contrôle Prudentiel sends a request for contributions to all the entities referred to in subparagraphs II A and II C of this article by 15 April of each year. The entities concerned must make the relevant payment to the Banque de France by 30 June of each year. **The institution that maintains the sole register referred to in Article L. 512-1 of the Insurance Code shall send the ACP a list, drawn up as of 1 January of each financial year, of the insurance and reinsurance brokers and brokerage houses referred to in Article L. 511-1 of said code and also of the intermediaries in banking transactions and payment services;**

2 For the entities referred to in subparagraph II B of this article, the Autorité de Contrôle Prudentiel shall issue a notice requesting payment of a provisional deposit of 75% of the contribution due in respect of the previous year by 15 February of each year. Said entities must make said payment to the Banque de France by 31 March of each year. The ACP shall then send them a notice calling for payment of the balance of the contribution due for the year then current by 15 July of each year. Said payment must be made by 30 September of each year;

3 A liable entity wishing to challenge the amount of the tax requested must send a reasoned appeal to the Chairman of the Autorité de Contrôle Prudentiel within sixty days. In the event of its appeal being totally or partially rejected, the liable entity shall receive a reasoned reminder letter. Challenges to such tax assessments are dealt with by the Administrative Court.

VI. – In the event of partial payment or non-compliance with the deadlines for payment referred to in paragraph V of this article, the Autorité de Contrôle Prudentiel shall send the liable entity a reasoned reminder letter by registered mail with confirmation of receipt. Said letter shall inform it that the surcharge referred to in Article 1731 of the Code Général des

Impôts is applicable to the overdue sums. The arrears interest referred to in Article 1727 shall be applied.

The surcharge shall become applicable upon expiry of a period of thirty days commencing on the date of delivery to the liable entity of the reminder letter establishing the additional contribution. The liable entity shall be informed of its right to submit its observations within said timeframe.

VII. – During the three years following the year in respect of which the tax is due, the Autorité de Contrôle Prudentiel may revise the amount of the contribution in accordance with the procedures referred to in paragraph V.

**VIII. – If payment is not effected within thirty days of the date of delivery to the liable entity of the reminder letter establishing the additional contribution or of the registered letter establishing the revised amount of the contribution, the Banque de France shall refer the matter to the Public Accountant, who shall issue an enforceable instrument for collection via the procedures, and subject to the sanctions, guarantees, sureties and preferential rights, that apply to turnover tax.** Appeals shall be lodged, examined and decided according to the rules applicable to said tax. The sums thus recovered shall be transferred to the Banque de France, which shall reallocate them to the budget of the Autorité de Contrôle Prudentiel. The State shall deduct the recovery costs, the rate of which is determined by the regulations and cannot exceed 1% of the sums thus recovered on behalf of the Banque de France.

IX. – All the actions linked to the recovery by the Banque de France of the contribution for the cost of supervision and the payment of the proceeds thereof to the Autorité de Contrôle Prudentiel are the subject of a specific accounting follow-up in the accounts of the Banque de France.

X. – A decree issued following consultation with the Conseil d'Etat determines, where necessary, the implementing provisions of this article.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 12 and 36 Official Journal of 23 October 2010*

## Section 4 Approval of, and changes in, equity interests

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-21. – The Autorité de Contrôle Prudentiel draws up and publishes a list of the entities referred to in paragraph I of Article L. 612-2.

A decree issued following consultation with the Conseil d'Etat determines the implementing provisions of this article.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 36 Official Journal of 23 October 2010 (words deleted)*

Art. L. 612-22. – Where a merger that directly or indirectly concerns an entity subject to the supervision of the Autorité de Contrôle Prudentiel is the subject of a thorough examination pursuant to the last subparagraph of paragraph III of Article L. 430-5 of the Commercial Code, the Autorité de la Concurrence shall, before ruling pursuant to Article L. 430-7 of said code, obtain the opinion of the Autorité de Contrôle Prudentiel. The Autorité de la Concurrence shall, to that end, send the Autorité de Contrôle Prudentiel the details of any case referred to it that relates to such a merger. The Autorité de Contrôle Prudentiel

shall send its opinion to the Autorité de la Concurrence within one month of receiving said request. The opinion of the Autorité de Contrôle Prudentiel shall be made public as provided for in Article L. 430-10 of the Commercial Code.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

## Section 5 Exercise of supervision

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-23. – The Secretary General of the Autorité de Contrôle Prudentiel organises the on-site document inspections.

Implementation of the inspections carried out under the provisions of the Consumer Code by the Autorité de Contrôle Prudentiel is without prejudice to the competence conferred on the staff of the Autorité Administrative Chargée de la Concurrence et de la Consommation (Administrative Authority for Competition and Consumer Protection) under Article L. 141-1 of the Consumer Code.

For said inspections, the Secretary General may have recourse to external auditing bodies, statutory auditors, experts or entities or competent authorities. **In order to contribute to the supervision of the entities referred to in subparagraphs II 1 and II 3 of Article L. 612-2, the Secretary General may enlist the services of a professional body representing the interests of one or more categories of said entities which the entity inspected is a member of.**

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 36 Official Journal of 23 October 2010*

Art. L. 612-24. – The Autorité de Contrôle Prudentiel determines the list, the model, the frequency and the deadlines for transmission of the documents and information that must be submitted to it periodically.

The Secretary General of the Autorité de Contrôle Prudentiel may, moreover, request from the entities subject to its supervision any information or documents on whatever medium and obtain a copy thereof, as well as any clarification or proof required to perform its duties. It may ask said entities to provide it with the statutory auditors' reports and, more generally, with any accounting document and may, where necessary, request certification thereof.

The Autorité de Contrôle Prudentiel shall collect from the entities referred to in subparagraph I B of Article L. 612-2, on behalf of the Institut National de la Statistique et des Études Économiques (INSEE) and of the statistical units of the Ministry of Social Security, the data relating to the additional welfare benefits determined in a decree issued as provided for in the Act of 7 June 1951 on the obligation, the coordination and secrecy with regard to statistics after consultation with the Conseil Supérieur de la Mutualité and the Comité Consultatif de la Législation et de la Réglementation Financières.

The Secretary General of the ACP may summon and hear any entity subject to its supervision or which it needs to hear in order to perform its supervisory duties.

Without prejudice to exercise of the rights pertaining to adversary procedures or to the requirements of jurisdictional procedures, the Secretary General of the ACP shall not be required to disclose to the entities subject to its supervision or to third parties the documents concerning them that it has

produced or received, in particular where such disclosure would compromise business secrets or the professional secrecy the ACP is bound by.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-25. – In the event of a breach of an obligation to make a declaration or to provide statements, documents or data requested by the Secretary General or by one of the ACP's sessions, the Autorité de Contrôle Prudentiel may impose an Injunction along with a coercive fine in respect of which it shall determine the amount and the effective date.

**The coercive fine shall be collected by the Public Accountant and credited to the State budget.**

A decree issued following consultation with the Conseil d'Etat determines the implementing provisions of this article and, inter alia, the maximum daily amount of, and the means of collecting, the coercive fine in the event of total or partial non-compliance or delayed compliance.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

*Amended by Order No. 2010-420 of 27 April 2010 Art. 112 Official Journal of 30 April 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 12 Official Journal of 23 October 2010*

Art. L. 612-26. – The Secretary General of the Autorité de Contrôle Prudentiel may decide to extend the on-the-spot inspection of an entity subject to its supervision to:

1 Its subsidiaries;

2 The legal entities that directly or indirectly control it within the meaning of Article L. 233-3 of the Commercial Code;

3 The subsidiaries of said legal entities;

4 Any other company or legal entity belonging to the same group;

5 The entities and organisations of any kind that have, directly or indirectly, entered into a management agreement or reinsurance agreement with said company or any other kind of agreement likely to affect its operational autonomy, or any decision concerning one of its business areas;

6 Any company which is affiliated to it within the meaning of paragraph 5 of Article L. 334-2 of the Insurance Code;

7 The mutual societies and unions covered by Book III of the Mutuality Code which are linked to it;

8 The supplementary pension management institutions that are linked to it.

The facts gathered during said extension of the inspection may be disclosed by the Secretary General to the entity referred to in the first paragraph of this article, notwithstanding the professional secrecy referred to in Article L. 612-17.

Within the framework of international agreements, on-the-spot inspections may also be extended to the foreign branches or subsidiaries of companies subject to the ACP's supervision.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-27. – Where an on-the-spot inspection is carried out, a report shall be drawn up. The draft report shall be sent to the senior managers of the entity inspected, who may



make their observations known for inclusion in the definitive report.

**In the event of an emergency or another requirement to urgently establish the facts relating to acts or misconduct likely to constitute violations of the provisions applicable to the entities supervised, the ACP's inspectors may draw up reports.**

The results of the on-the-spot inspections shall be sent to the inspected entity's Board of Directors or its Executive Board, and to its Supervisory Board or corresponding deliberative body.

They may also be sent to its statutory auditors and to the specialised real-estate credit company **and housing loan company** inspectors.

They may likewise be sent to the company that controls it within the meaning of paragraph I of Article L. 511-20, and of paragraph 1 of Article L. 334-2 of the Insurance Code, to the central body to which it is affiliated, to the insurance company group or the mutual union to which it is affiliated or to its reference body within the meaning of Articles L. 212-7-1 of the Mutuality Code and L. 933-2 of the Social Security Code.

Said results, and likewise any other information provided to the supervised entities or to the entities referred to in the previous paragraph which includes an assessment of their situation, cannot be provided to third parties, save for the cases which the law provides for, without the consent of the Autorité de Contrôle Prudentiel.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 12 Official Journal of 23 October 2010*

Art. L. 612-28. – Where facts likely to warrant prosecution are uncovered, the Chairman of the Autorité de Contrôle Prudentiel shall inform the local Public Prosecutor thereof, without prejudice to any sanctions that the Autorité de Contrôle Prudentiel may impose.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-29. – Where practices like to warrant prosecution under Articles L. 420-1 and L. 420-2 of the Commercial Code are uncovered, the Chairman of the ACP shall inform the competent competition authorities thereof.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

**Art. L. 612-29-1. – Where, for marketing and customer protection purposes, a professional body representing the interests of one or more categories of entities within the area of competence of the Autorité de Contrôle Prudentiel, or which may be subject to its supervision, draws up conduct of business rules intended to clarify the rules applicable to its members, the ACP shall verify their compatibility with the laws and regulations applicable to them. The association may ask the ACP to approve all or part of the conduct of business rules it has drawn up for marketing and customer protection purposes. Publication of the ACP's approval of said rules makes them applicable to all of said association's members, as determined in the rules or in the approval decision.**

The ACP may formally record the existence of good professional practices or make recommendations that lay down rules of good professional practice with regard to marketing and customer protection.

**The ACP may ask one or more professional bodies representing the interests of one or more categories of entities within its area of competence, or which may be subject to its supervision, to submit proposals to it in this regard.**

The ACP shall publish a collection of all the conduct of business rules, professional rules and other formally recorded or recommended good practices that it verifies compliance with.

**The Minister for the Economy may ask the Autorité de Contrôle Prudentiel to carry out in the entities and domains within its sphere of competence a verification of compliance with the commitments made by one or more professional bodies representing their interests within the framework of the measures proposed by the Comité Consultatif du Secteur Financier. The results of said verification shall be the subject of a report which the ACP shall submit to the Minister and to the Comité Consultatif du Secteur Financier. Said report shall indicate, for each commitment, the portion attributable to the professionals fulfilling it.**

*Inserted by Act No. 2010-1249 of 23 October 2010 Art. 36 Official Journal of 23 October 2010*

## Section 6 Public order administrative measures

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-30. – Where it notes that an entity subject to its supervision has practices likely to jeopardise the interests of its clients, insured parties, members or beneficiaries, the Autorité de Contrôle Prudentiel may, after giving its senior managers an opportunity to present their explanations, issue a warning to it to cease said practices insofar as they breach the good practice rules of the profession concerned.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-31. – The Autorité de Contrôle Prudentiel may order any entity subject to its supervision to take any measures necessary to achieve compliance with the obligations that the Autorité de Contrôle Prudentiel is responsible for supervising, and within a set timeframe.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-32. – The Autorité de Contrôle Prudentiel may require any entity subject to its supervision to submit for its approval a recovery programme covering all the measures needed to restore or strengthen its financial situation, to improve its management methods or to ensure the appropriateness of its organisation for its business or its development objectives.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-33. – Where the solvency or the liquidity of an entity subject to the ACP's supervision or where the interests of its clients, insured parties, members or beneficiaries are, or are likely to be, compromised, the Autorité de Contrôle Prudentiel shall take the necessary protective measures.

It may, to such effect:

1 Place the entity under special supervision;

2 Limit or temporarily prohibit the execution of certain transactions by said entity, including acceptance of premiums or deposits;

3 Suspend, restrict or temporarily prohibit the free disposal of all or some of the supervised entity's assets;

4 Order an entity referred to in subparagraphs B 1, B 3 and B 5 of paragraph I of Article L. 612-2 to suspend or limit the payment of surrender values, the right to execute arbitrage transactions, the payment of advances on contracts or the right to opt out;

5 Order the transfer, without consultation, of all or some of the insurance contracts or settlement portfolios **or of the proposal forms for contracts or settlement portfolios** of the entities referred to in subparagraphs B 1, B 3 and B 5 of paragraph I of Article L. 612-2;

6 Decide to prohibit or limit the distribution of a dividend to the shareholders or a return on the membership shares of said entities;

7 Suspend one or more of the supervised entity's senior managers.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 12 Official Journal of 23 October 2010*

Art. L. 612-34. – I. – The Autorité de Contrôle Prudentiel may appoint a provisional administrator to a legal entity it supervises, to whom all the administrative, managerial and representational powers of said entity shall be transferred. Said provisional administrator shall manage the entity's movable and immovable property with all due diligence.

Said appointment shall be made either at the request of the senior managers where they consider that they are no longer able to perform their duties normally, or at the initiative of the Autorité de Contrôle Prudentiel where the management **of the supervised entity can no longer be performed normally or in the event of one or more of its senior managers being suspended.**

In the case of institutions affiliated to a central body, said body may ask the Autorité de Contrôle Prudentiel to appoint a provisional administrator to the institutions affiliated to it.

II. – Where the situation gives rise to fears that an institution or a company covered by the deposit guarantee fund may eventually be unable to pay the remuneration of the provisional administrator, the deposit guarantee fund may, on a proposal from the Autorité de Contrôle Prudentiel, decide to guarantee said payment in proportion, where applicable, to the different mechanisms implemented.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 12 Official Journal of 23 October 2010*

Art. L. 612-35. – The Autorité de Contrôle Prudentiel shall decide the measures referred to in the Articles of this section upon conclusion of inter partes proceedings.

Where particularly urgent circumstances so warrant, the Autorité de Contrôle Prudentiel may provisionally order protective measures referred to in Articles L. 612-33 and L. 612-34 without inter partes proceedings. Inter partes proceedings shall then be immediately instituted in order to lift, adapt or confirm said emergency protective measures.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-36. – The decisions of the Board relating to a supervised entity taken pursuant to this section may be made known to the company that controls it within the meaning of paragraph I of Article L. 511-20, of 1 of Article L. 334-2 of the Insurance Code, to the central body to which it is affiliated, to the insurance company group or the mutual union to which it is affiliated or to its reference body within the meaning of Articles L. 212-7-1 of the Mutuality Code and L. 933-2 of the Social Security Code.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-37. – A decree issued following consultation with the Conseil d'Etat determines the implementing provisions of this section.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

## Section 7 Disciplinary power

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

### Subsection 1 Disciplinary proceedings

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-38. – (Where one of the sessions of the Board decides to open disciplinary proceedings, its Chairman shall notify the complaints to the entities concerned. It shall send the notice of complaints to the Enforcement Commission.) **[One of the sessions of the Board shall examine the conclusions reached, within the framework of the Autorité de Contrôle Prudentiel's supervisory duties, by the ACP's units or the report drawn up pursuant to Article L. 612-27. If it decides to initiate disciplinary proceedings, its Chairman shall inform the individuals concerned of the complaints. It shall send the notice of complaints to the Enforcement Commission which shall designate a rapporteur from among its members.]**

The Enforcement Commission shall ensure that the inter partes nature of the procedure is respected. It shall send information and convening notices to any individual or entity referred to in the notice of complaints. Any individual summoned shall have the right to be assisted or represented by the advisor of his choice. The Enforcement Commission shall make use of the ACP's units for the conduct of the procedure.

The member of the Board designated by the session that decided to open disciplinary proceedings shall be summoned to the hearing. He shall attend without voting rights. He may be assisted or represented by the ACP's units. He may make observations in support of the complaints notified and may propose a sanction.

The Enforcement Commission may hear any member of the ACP's units.

A challenge to a member of the Enforcement Commission may be made at the request of an alleged perpetrator where there are good grounds for questioning the impartiality of said member.

(The Enforcement Commission may sit only if the majority of its members are present. It deliberates without the presence of the parties, the Government representative, the member of the Board and of the ACP's units tasked with assisting the latter or representing it.) [The Enforcement Commission may sit only if the majority of its members are present. It deliberates without the presence of the parties, **the rapporteur, the Director General of the Treasury or the Social Security Director or their representatives**, the member of the Board and of the ACP's units tasked with assisting the latter or representing it. **It hands down a reasoned decision.**]

The provisions of Article L. 612-36 shall apply to the decisions of the Enforcement Commission.

Where it imposes a disciplinary sanction on an investment service provider with regard to its prudential obligations, the Autorité de Contrôle Prudentiel shall inform the Autorité des Marchés Financiers thereof.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 15 Official Journal of 23 October 2010 effective 23 January 2011*

#### Subsection 2 List of sanctions

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-39. – If an entity referred to in paragraph I of Article L. 612-2, with the exception of those referred to in subparagraphs A 4, A 5 and B 4, has violated a legislative or regulatory provision that the ACP is responsible for monitoring or the approved conduct of business rules applicable to its profession, and has not submitted the recovery programme requested to the ACP, has not heeded a warning, has not responded to a formal demand or has not complied with the special conditions laid down or the commitments made at the time of application for approval, authorisation or an exception envisaged in the relevant laws or regulations, the Enforcement Commission may impose one or more of the following disciplinary sanctions, commensurate with the seriousness of the violation:

1. A warning;
2. A reprimand;
3. A prohibition on the execution of certain transactions and any other restriction on the conducting of its business;
4. The temporary suspension of one or more senior managers or, in the case of a payment institution engaged in hybrid activities, of the individuals declared responsible for the management of the payment service activities, with or without the appointment of a provisional administrator;
5. The dismissal without consultation of one or more senior managers or, in the case of a payment institution engaged in hybrid activities, of the individuals declared responsible for the management of the payment service activities, with or without the appointment of a provisional administrator;
6. A partial withdrawal of approval;
7. Complete withdrawal of approval or delisting of the approved individuals, with or without the appointment of a liquidator.

The duration of the sanctions referred to in paragraphs 3 and 4 cannot exceed ten years.

Where the disciplinary proceedings instituted may lead to the imposition of sanctions on senior managers, the ACP's session which decided to initiate the procedure shall expressly

indicate, in the notice of complaints, that the sanctions referred to in paragraphs 4 and 5 are likely to be imposed on the senior managers that it names, identifying the elements likely to establish their direct and personal responsibility for the breaches or infractions in question, and the Enforcement Commission shall ensure that the inter partes nature of the procedure is respected in regard to them.

The Enforcement Commission may impose, either instead of, or in addition to, said sanctions, a fine of not more than **one hundred million euros**.

The Enforcement Commission may join a coercive fine to the sanction, in respect of which it shall determine the amount and the effective date. A decree issued following consultation with the Conseil d'Etat determines the procedure applicable, the maximum daily amount of the coercive fine and the manner in which said fine shall be collected in the event of total or partial non-compliance or delayed compliance.

The Enforcement Commission may also impose the sanctions referred to in this Article if the injunctions referred to in Articles L. 511-41-3 and L. 522-15-1 and the additional requirements referred to in the second paragraph of Article L. 334-1 of the Insurance Code, **the first paragraph of Article L. 510-1-1 of the Mutuality Code or the first paragraph of Article L. 931-18 of the Social Security Code** have not been complied with.

**The Enforcement Commission's decision shall be made public in the publications, journals or media that it indicates, in a format commensurate with the offence committed and the sanction imposed. The cost thereof shall be borne by the entities penalised. However, where its publication could seriously disrupt the financial markets or cause undue damage to the parties involved, the Commission may decide not to publish the decision.**

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 12 and 16 Official Journal of 23 October 2010*

Art. L. 612-40. – If it appears that a financial holding company or a mixed financial holding company is in breach of the laws and regulations applicable to its business, the Enforcement Commission may impose on it, commensurate with the **seriousness** of the breach, a warning, a reprimand, the temporary suspension of one or more senior managers, with or without the appointment of a provisional administrator, or the dismissal without consultation of one or more senior managers, with or without the appointment of a provisional administrator.

Where the disciplinary proceedings instituted may lead to the suspension or dismissal without consultation of senior managers, the ACP's session which decided to initiate the procedure shall expressly indicate this in the notice of complaints, identifying the elements likely to establish their direct and personal responsibility for the breaches or infractions in question, and the Enforcement Commission shall ensure that the inter partes nature of the procedure is respected in regard to them.

The Enforcement Commission may impose, either instead of, or in addition to, said sanctions, a fine of not more than **one hundred million euros**.

The Enforcement Commission may join a coercive fine to the sanction, in respect of which it shall determine the amount and the effective date. A decree issued following consultation with the Conseil d'Etat determines the procedure applicable, the maximum daily amount of the coercive fine and the manner in which said fine shall be collected in the event of total or partial non-compliance or delayed compliance.

**The Enforcement Commission's decision shall be made public in the publications, journals or media that it indicates, in a format commensurate with the offence committed and the sanction imposed. The cost thereof shall be borne by the entities penalised. However, where its publication could seriously disrupt the financial markets or cause undue damage to the parties involved, the Commission may decide not to publish the decision.**

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 16 Official Journal of 23 October 2010*

Art. L. 612-41. – I. – If an entity referred to in subparagraph B 4 of paragraphs I or II of Article L. 612-2 has violated a legislative or regulatory provision of the Insurance Code or of the Monetary and Financial Code which is applicable to it, the Enforcement Commission may impose on it or, where appropriate, on its senior managers, partners or third parties empowered to manage or administer it, one or more of the following disciplinary sanctions, commensurate with the seriousness of the violation:

1. A warning;
2. A reprimand;
3. A prohibition on the execution of certain intermediation transactions and any other restriction on the conducting of its business;
- 4 The temporary suspension of one or more senior managers of the entity carrying on an intermediation business;
- 5 The dismissal without consultation of one or more senior managers of the entity carrying on an intermediation business;
- 6 Delisting from the register referred to in Article L. 512-1 of the Insurance Code;
- 7 A prohibition on carrying on an intermediation business.

The duration of the sanctions referred to in paragraphs 3, 4 and 7 cannot exceed ten years.

Where the disciplinary proceedings instituted may lead to the imposition of sanctions on senior managers, the ACP's session which decided to initiate the procedure shall expressly indicate this in the notice of complaints, identifying the elements likely to establish their direct and personal responsibility for the breaches or infractions in question, and the Enforcement Commission shall ensure that the inter partes nature of the procedure is respected in regard to them.

The Enforcement Commission may impose, either instead of, or in addition to, said sanctions, a fine of not more than one hundred million euros.

The Enforcement Commission may join a coercive fine to the sanction, in respect of which it shall determine the amount and the effective date. A decree issued following consultation with the Conseil d'Etat determines the procedure applicable, the maximum daily amount of the coercive fine and the manner in which said fine shall be collected in the event of total or partial non-compliance or delayed compliance.

**The Enforcement Commission's decision shall be made public in the publications, journals or media that it indicates, in a format commensurate with the offence committed and the sanction imposed. The cost thereof shall be borne by the entities penalised. However, where its publication could seriously disrupt the financial markets or cause undue damage to the parties involved, the Commission may decide not to publish the decision.**

II. – If a money changer has violated a provision of this code which is applicable to it, the Enforcement Commission may impose one of the following disciplinary sanctions, commensurate with the seriousness of the violation:

1. A warning;
2. A reprimand;
- 3 Removal from the list referred to in Article L. 612-21.

It may impose, either instead of, or in addition to, said sanctions, a fine commensurate with the seriousness of the breach which shall not exceed **one hundred million euros**.

The Enforcement Commission may prohibit the money changers' de facto or de jure senior managers from directly or indirectly practising the profession of money changer for a maximum period of ten years. Where the money changer is a legal entity, the Enforcement Commission may decide that its de facto or de jure senior managers are jointly and severally liable to pay the fine imposed. Where the disciplinary proceedings instituted may lead to the application of sanctions to senior managers, the ACP's session which decided to initiate the procedure shall expressly indicate this in the notice of complaints, identifying the elements likely to establish their direct and personal responsibility for the breaches or infractions in question, and the Enforcement Commission shall ensure that the inter partes nature of the procedure is respected in regard to them.

The Enforcement Commission may join a coercive fine to the sanction, in respect of which it shall determine the amount and the effective date. A decree issued following consultation with the Conseil d'Etat determines the procedure applicable, the maximum daily amount of the coercive fine and the manner in which said fine shall be collected in the event of total or partial non-compliance or delayed compliance.

**The Enforcement Commission's decision shall be made public in the publications, journals or media that it indicates, in a format commensurate with the offence committed and the sanction imposed. The cost thereof shall be borne by the entities sanctioned. However, where its publication could seriously disrupt the financial markets or cause undue damage to the parties involved, the Commission may decide not to publish the decision.**

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 16 Official Journal of 23 October 2010*

Art. L. 612-42. – I. – The amounts of the sanctions and coercive fines referred to Articles L. 612-39 to L. 612-41 shall be collected by the Trésor Public and credited to the State budget.

II. – A decree issued following consultation with the Conseil d'Etat determines the implementing provisions of this section.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

## Section 8 Relations with statutory auditors

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-43. – The Autorité de Contrôle Prudentiel shall be consulted concerning any proposal to appoint or reappoint the statutory auditors of the entities subject to its supervision, save for **the entities referred to in subparagraphs A 6 and A**



**7 of paragraph I of Article L. 612-2**, money changers, payment institutions engaged in hybrid activities, companies belonging to a mixed insurance group and the entities referred to in paragraphs II and III of Article L. 612-2, under conditions determined by decree.

Where the situation so warrants, the ACP may also appoint an additional statutory auditor.

The provisions of the above paragraph shall not apply to the companies referred to in subparagraph 1 of paragraph III of Article L. 310-1-1 of the Insurance Code, the mutual societies and unions referred to in paragraph I of Article L. 211-7-2 of the Mutuality Code or to the provident institutions and unions of provident institutions referred to in paragraph I of Article L. 931-4-1 of the Social Security Code.

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 12 Official Journal of 23 October 2010*

Art. L. 612-44. – I. – The Autorité de Contrôle Prudentiel may ask the statutory auditors of the entities subject to its supervision for any information on the activities and financial situation of the entity they audit and on the techniques applied to it in the performance of their assignment.

The Autorité de Contrôle Prudentiel may also send the statutory auditors of the entities referred to in the previous paragraph, those of undertakings for collective investment in transferable securities and those of the management companies referred to in Article L. 214-25, the information they need to perform their assignment.

The information thus provided is covered by the professional secrecy rule.

The Autorité de Contrôle Prudentiel may also send written observations to the statutory auditors, who shall then be required to provide written answers.

**The first paragraph shall apply to the specialised real-estate credit company and housing loan company inspectors.**

II. – Statutory auditors are required to inform the Autorité de Contrôle Prudentiel as soon as possible of any fact or decision concerning the entity subject to its supervision which they have become aware of in the performance of their duties and which could:

1. Constitute a breach of the laws or regulations applicable to them and have a significant impact on their financial situation, profits or assets;

2 Jeopardise its continued exploitation;

3. Give rise to the issuing of reservations or to a refusal to certify its accounts.

The same obligation shall apply to the aforementioned facts and decisions which the statutory auditors may become aware of in the performance of their duties relating to a parent company or a subsidiary of the supervised entity or in a sub-entity of a mutual society, a union or a federation or in an entity covered by Article L. 212-7 of the Mutuality Code.

Where the statutory auditors perform their duties in a credit institution affiliated to one of the central bodies referred to in Article L. 511-30, the facts and decisions referred to in the previous paragraphs shall be made known to said central body at the same time.

III. – For the purposes of this section, statutory auditors are released from professional secrecy in relation to the Autorité de Contrôle Prudentiel and, where applicable, to the central bodies referred to in Article L. 511-30; they shall not incur liability in

respect of the information or facts they disclose in performance of the obligations resulting from these provisions.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 12 Official Journal of 23 October 2010*

Art. L. 612-45. – Where it has knowledge of a violation or breach of the laws or regulations applicable to statutory auditors committed by a statutory auditor of an entity subject to its supervision, the Autorité de Contrôle Prudentiel may ask the competent court to relieve him of his duties as provided for in Article L. 823-7 of the Commercial Code.

The Autorité de Contrôle Prudentiel may also report said violation or breach to the competent State Prosecutor's Office with a view to initiating disciplinary proceedings. For said purpose, it may provide him with all the information it deems necessary to ensure that he is duly informed.

It may communicate any information it deems necessary to the High Council of the Order of Statutory Auditors to ensure that it is duly informed.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

## Section 9 Cooperation

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

### Subsection 1 Cooperation with guarantee funds

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-46. – The guarantee funds referred to in Articles L. 312-4, L. 313-50 and L. 322-2 of this code, L. 421-1 and L. 423-1 of the Insurance Code, L. 431-1 of the Mutuality Code and L. 931-35 of the Social Security Code shall be consulted by the Autorité de Contrôle Prudentiel regarding the applications for approval received from entities coming within their scope.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

### Subsection 2 Coordination with regard to supervision of the relations between the member professions and their clients

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-47. – The Autorité de Contrôle Prudentiel and the Autorité des Marchés Financiers have instituted a Joint Unit tasked, under their responsibility, with:

1 Coordinating the proposals for supervision priority drawn up by the two authorities with regard to compliance by the entities subject to their supervision with the obligations they have towards their clients in relation to banking or insurance transactions and investment or payment services and any other savings products they offer;

2 Analysing the results of the supervisory activities of the two authorities with regard to compliance with the obligations the professionals have towards their clients and proposing to

the Secretaries General the conclusions to be drawn consistent with the respective areas of competence of each authority;

3 Coordinating the supervision of all the transactions and services referred to in paragraph 1 in order to identify the risk factors, as well as the monitoring of the advertising campaigns relating to said products;

4 Offering a common point of entry authorised to receive any requests that clients, insured parties, beneficiaries, assigns or savers may send to the Autorité de Contrôle Prudentiel or to the Autorité des Marchés Financiers.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-48. – I. – The Joint Unit's coordinator is appointed jointly by the Secretaries General of the Autorité de Contrôle Prudentiel and of the Autorité des Marchés Financiers. Under their joint authority, he is responsible for the implementation of the tasks referred to in Article L. 612-47.

II. – Said authorities shall make available to the coordinator and to the individuals working on the tasks that constitute the Joint Unit's coordination objective all of the information, including personal information, that they require to perform their tasks. Said exchanges of information are protected by professional secrecy.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-49. – The Joint Unit's operational procedures are set forth in an agreement drawn up by the Autorité de Contrôle Prudentiel and the Autorité des Marchés Financiers.

They have determined by agreement with the Banque de France the circumstances in which they may have recourse to its units in connection with their duty to monitor the relations between the professions they supervise and their clients.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-50. – The Autorité de Contrôle Prudentiel and the Autorité des Marchés Financiers shall jointly draw up a report on the activities of their Joint Unit each year.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

## Chapter III Provisions specific to credit institutions, investment firms and payment institutions

*Heading amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

### Section 1 Supervision on a consolidated basis

*Heading amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

Art. L. 613-20-1. – The Autorité de Contrôle Prudentiel performs consolidated supervision for a group within the meaning of Articles L. 511-41-2 and L. 533-4-1 where the parent company of said group in the European Community or the European Economic Area is a credit institution or an

investment firm subject to its supervision. Where the parent company is a financial holding company or a mixed financial holding company within the meaning, respectively, of Articles L. 517-1 and L. 517-4, the Autorité de Contrôle Prudentiel performs consolidated supervision if said company meets criteria laid down by order of the Minister for the Economy.

Where the Autorité de Contrôle Prudentiel is responsible for performing the supervision of a group pursuant to the first paragraph of this article, it performs its supervision with regard to the entities supervised on a consolidated basis throughout the European Economic Area. It therefore organises, in particular:

1. Coordination of the collection and dissemination of useful information both in the normal course of business and in emergency situations;

2. Planning and coordination of the prudential supervision activities, in cooperation with the competent authorities concerned, **including the central banks, both in the normal course of business and in emergency situations.**

*Inserted by Order No. 2007-571 of 19 April 2007 Art. 5 Official Journal of 20 April 2007*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 19 Official Journal of 23 October 2010*

**Art. L. 613-20-2. – In order to facilitate the supervision of groups on a consolidated basis, the Autorité de Contrôle Prudentiel creates boards of supervisors composed of the competent authorities of the Member States of the European Union or of other States party to the European Economic Area Agreement.**

The Autorité de Contrôle Prudentiel chairs the meetings of said boards. It ensures appropriate coordination with the competent authorities of the States that are not party to the Economic Area Agreement. It decides which competent authorities should attend each meeting of the board.

The constitution and the operations of the boards are based on written agreements entered into by the Autorité de Contrôle Prudentiel with the competent authorities concerned. The boards enable the Autorité de Contrôle Prudentiel and the other competent authorities concerned to:

- exchange information;
- agree to entrust tasks to each other and to delegate competence, voluntarily, where necessary;
- plan and coordinate the prudential supervision activities on the basis of an assessment of the group's risks;
- coordinate the collection of information;
- apply the prudential requirements in a cohesive manner throughout the entities within the group;
- take account of the prudential supervision activities prescribed for emergencies.

*Inserted by Order No. 2007-571 of 19 April 2007 Art. 5 Official Journal of 20 April 2007*

*Replaced by Act No. 2010-1249 of 22 October 2010 Art. 20 Official Journal of 23 October 2010*

Art. L. 613-20-3. – The provisions of Chapter II of Part III of this book, inter alia those of Articles L. 632-1, L. 632-3, L. 632-5 and L. 632-12, shall apply to the exercise of competence and to the agreements referred to in this section.

*Inserted by Order No. 2007-571 of 19 April 2007 Art. 5 Official Journal of 20 April 2007*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

Art. L. 613-20-4. – Where, as the authority responsible for supervision on a consolidated basis, the Autorité de Contrôle Prudentiel receives a request for authorisation relating to the use of an internal approach to risk assessment as envisaged in Article L. 511-41 on behalf of several credit institutions or investment firms belonging to the same group and established in at least two Member States of the European Community or party to the European Economic Area Agreement, it shall confer with the authorities concerned with a view to arriving at a decision that would form the basis of an agreement between them. Should they fail to reach agreement, it shall make a decision and convey it to the authorities concerned.

**The Autorité de Contrôle Prudentiel, as the authority responsible for supervision on a consolidated basis, and the competent authorities of other Member States of the European Union or of other States party to the European Economic Area Agreement shall confer with a view to reaching a joint decision on the equity capital requirement for each entity within the banking group on a consolidated basis within the meaning of the second paragraph of Article L. 511-41-3. Should they fail to reach an agreement, the Autorité de Contrôle Prudentiel shall consult the committee composed of the competent supervisory authorities of the Member States of the European Union at the request of any competent authority or on its own initiative. If they are still unable to reach an agreement, the Autorité de Contrôle Prudentiel, as the authority responsible for supervision on a consolidated basis, shall determine the appropriate level of the consolidated equity capital held by the group relative to its financial situation and its risk profile, pursuant to the second paragraph of Article L. 511-41-3.**

Where an authority of another Member State of the European Community or party to the European Economic Area Agreement consults the Autorité de Contrôle Prudentiel on a request for authorisation relating to the use of an internal approach to risk assessment in respect of which it is the authority responsible for supervision on a consolidated basis, the Autorité de Contrôle Prudentiel shall cooperate with a view to arriving at a decision it could agree with. In the event of said authority, after failing to secure such agreement, deciding the request alone, the decision taken by it shall apply in France as soon as the Autorité de Contrôle Prudentiel is informed thereof.

*Inserted by Order No. 2007-571 of 19 April 2007 Art. 5 Official Journal of 20 April 2007*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Arts. 20 and 21 Official Journal of 23 October 2010*

**Art. L. 613-20-6. – A decree issued following consultation with the Conseil d'Etat determines the implementing provisions of this section.**

*Inserted by Act No. 2010-1249 of 22 October 2010 Art. 21 Official Journal of 23 October 2010*

**Art. L. 613-20-5. – Where this is made necessary by an emergency situation, inter alia a development or event likely to undermine the liquidity of a market or the stability of the financial system of another Member State of the European Union or of another State party to the European Economic Area Agreement, the Autorité de Contrôle Prudentiel shall inform the competent authorities of said States as soon as possible and shall provide them with all**

**the information they need to perform their duties, pursuant to the rules laid down in Articles L. 631-1 and L. 632-1 to L. 632-4.**

*Inserted by Act No. 2010-1249 of 22 October 2010 Art. 19 Official Journal of 23 October 2010*

## **Section 2 Provisions relating to the treatment of credit institutions, payment institutions and investment firms in difficulty**

*Heading amended by Order No. 2009-866 of 15 July 2009 Art. 15 Official Journal of 16 July 2009*

*Numbering changed by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

### **Subsection 1 Measures specific to court-ordered recovery, reorganisation and liquidation plans for credit institutions and investment firms**

*Subsection title created by Order No. 2004-1127 of 21 October 2004 Official Journal No. 247 of 22 October 2004*

Art. L. 613-24. – Where a credit institution, a payment institution or one of the entities referred to in subparagraph A 2 of paragraph I of Article L. 612-2 has been delisted or where a firm illegally carries on the activity described in Article L. 311-1, paragraph II of Article L. 314-1 and in Article L. 511-1 or breaches a prohibition referred to in Article L. 511-5 or Article L. 521-2, the Autorité de Contrôle Prudentiel may, **in the circumstances envisaged in Article L. 612-35**, appoint a liquidator to whom all of the legal entity's administrative, management and representation powers shall be transferred.

Where the situation gives rise to fears that the credit institution or an entity referred to subparagraph A 2 of paragraph I of Article L. 612-2 may eventually be unable to pay the remuneration of the liquidator, the deposit guarantee fund may, under the terms and conditions set forth in Article L. 612-34, decide to guarantee said payment.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 12 Official Journal of 23 October 2010*

Art. L. 613-25. – Where a provisional administrator or a liquidator has been appointed to a credit institution pursuant to Articles L. 612-34 and L. 613-24, the Autorité de Contrôle Prudentiel may, having obtained the opinion of the guarantee fund pursuant to Article L. 312-5, refer the matter to the Regional Court (Tribunal de Grande Instance) so that it may, where it considers that the depositors' interests warrant this, order the sale of the shares held by one or more of said institution's de facto and de jure senior managers, salaried or otherwise. The selling price shall be determined on the basis of a court-ordered appraisal. The shares shall be valued in accordance with the methods used for a sale of assets, applying the appropriate weightings to each case, consistent with the value of the assets, the profits realised, the existence of any subsidiaries and the commercial prospects, and, for companies whose securities are admitted to trading on a regulated market, the market value. The action shall be initiated through a payment order served on the shareholders concerned. The competent Regional Court shall be the one having jurisdiction at the place where the credit institution's registered office is located.

In the same circumstances, the Regional Court may decide that the voting right attached to shares or voting right certificates held by one or more de facto or de jure senior

manager(s), salaried or otherwise, shall be exercised, for a period which it shall determine, by a court officer designated for said purpose.

In the same circumstances, the Regional Court may also order the sale of all of the entity's shares, or of the shares and membership shares which were not sold pursuant to the provisions of the first paragraph of this article. Where the shares are admitted to trading on a regulated market, the terms of the sale shall be determined by the General Regulation of the Autorité des Marchés Financiers.

The amount of the compensation due to unidentified holders shall be recorded.

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

Art. L. 613-26. – As an exception to the provisions of Article L. 631-1 of the Commercial Code, credit institutions which are unable to meet their current liabilities, immediately or in the near future, shall be deemed insolvent.

Court-ordered liquidation proceedings may be instituted against credit institutions which have been delisted by order of the Autorité de Contrôle Prudentiel if their liabilities towards third parties, excluding debts which are redeemable only after the unsecured creditors have been fully paid off, are effectively greater than the assets less the mandatory provisions.

*Amended by Act No. 2005-845 of 26 July 2005 Art. 172 Official Journal of 27 July 2005*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Art. L. 613-27. – The court-ordered recovery, reorganisation or liquidation proceedings introduced by Book VI of the Commercial Code may be instituted against a credit institution, a payment institution or an investment firm only after the opinion of the Autorité de Contrôle Prudentiel has been sought.

An application to the court seeking to commence a conciliation procedure introduced by Book VI of the Commercial Code against a credit institution, a payment institution or an investment firm may be made only after the opinion of the Autorité de Contrôle Prudentiel has been sought.

A decree issued following consultation with the Conseil d'Etat determines the form in which the opinions referred to in the first and second paragraphs above shall be given.

*Amended by Act No. 2005-845 of 26 July 2005 Art. 165 Official Journal of 27 July 2005*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 15 Official Journal of 16 July 2009*

Art. L. 613-28. – Where a provisional administrator has been appointed by the Autorité de Contrôle Prudentiel pursuant to Article L. 612-34, the court may entrust the receiver with the supervision of the management tasks referred to in Article L. 622-1 of the Commercial Code only.

*Amended by Act No. 2005-845 of 26 July 2005 Official Journal Appendix of 27 July 2005*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

Art. L. 613-29. – In the event of court-ordered liquidation proceedings being instituted or ordered in relation to a credit institution, a payment institution or an investment firm, the Autorité de Contrôle Prudentiel shall appoint a liquidator who shall draw up an inventory of the assets and proceed with the

liquidation transactions and the redundancies under the terms and conditions laid down in Part IV of Book VI of the Commercial Code.

Pursuant to Articles L. 641-9 or L. 622-5 of the Commercial Code, the court-appointed liquidator shall perform the tasks respectively indicated in the first three paragraphs of Article L. 641-4 or in Article L. 622-5 of said code, with the exception of the inventory of the company's assets and the liquidation transactions.

*Amended by Act No. 2005-845 of 26 July 2005 Art. 173 III and Official Journal Appendix of 27 July 2005*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 15 Official Journal of 16 July 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Art. L. 613-30. – In the event of a court-ordered recovery, reorganisation or liquidation procedure being instituted in relation to a credit institution or an investment firm, the guarantee fund shall be exempted from making the declaration referred to in Article L. 622-24 of the Commercial Code, as shall the depositors in respect of their debts which come wholly or partly within the scope of the fund.

The fund shall inform the depositors of the amount of the debts excluded from the scope of the fund and shall specify the arrangements for declaring said debts to the court-appointed liquidator.

The court-appointed liquidator shall draw up the statements of all the debts. Said statements must be duly noted by the official receiver, filed with the Commercial Court registry and made public. In the event of them being challenged, the claimant must bring the matter before the court within two months of them being made public, under pain of extinction.

A decree issued following consultation with the Conseil d'Etat determines the implementing provisions of this article.

*Amended by Act No. 2005-845 of 26 July 2005 Art. 165 and Official Journal Appendix of 27 July 2005*

Art. L. 613-30-1. – The commencement of a court-ordered recovery, reorganisation or liquidation procedure as well as any enforcement procedure and any equivalent court-ordered procedure instituted against a payment institution on the basis of a foreign legal system shall not affect the funds received from the users of payment services that are deposited or invested in financial instruments held in accounts specifically opened for that purpose as provided for in Article L. 522-17.

Where a court-ordered recovery, reorganisation or liquidation procedure is commenced against a payment institution, the court-appointed administrator or the liquidator, together with the provisional administrator or the liquidator appointed, where applicable, by the Autorité de Contrôle Prudentiel, shall verify that the funds received from the users of payment services that are deposited or invested in financial instruments held in accounts specifically opened for that purpose as provided for in Article L. 522-17 are sufficient to enable the payment institution to meet its obligations towards its users. In the event of said funds proving to be insufficient, a proportional distribution of the funds deposited shall be made to said users. Said funds shall be returned to the users who are exempted from the declaration referred to in Article L. 622-24 of the Commercial Code.

Said users shall be exempted from making the declaration referred to in Article L. 622-24 of the Commercial Code in respect of the portion of the funds which could not be returned to them on account of the insufficiency noted.



The official receiver shall be informed of the result of the verification carried out by the court-appointed administrator or the liquidator and, where applicable, of the proportional distribution of the funds.

A decree issued following consultation with the Conseil d'Etat determines the implementing provisions of this article.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 15 Official Journal of 16 July 2009*

Art. L. 613-31. – The provisions relating to the court-ordered recovery, reorganisation or liquidation of the credit institutions and investment firms referred to in Articles L. 613-25 to L. 613-30 and L. 211-10 shall not apply to court-ordered proceedings instituted before 29 June 1999.

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 79 Official Journal of 7 May 2005*

*Amended by Act No. 2005-845 of 26 July 2005 Art. 165 Official Journal of 27 July 2005*

*Amended by Order No. 2009-15 of 8 January 2009 Art. 5 Official Journal of 9 January 2009*

## Subsection 2 Measures to reorganise and liquidate Community credit institutions

*Subsection created by Order No. 2004-1127 of 21 October 2004 Official Journal No. 247 of 22 October 2004*

Art. L. 613-31-1. – This subsection applies to the reorganisation measures and liquidation procedures for credit institutions and their branches established in a Member State of the European Community other than the State in which their registered office is located. The States party to the European Economic Area Agreement shall be treated as Member States of the European Community.

It shall also apply to the branches of a credit institution having its registered office outside the European Economic Area, provided that it has branches established in at least two Member States.

*(Inserted by Order No. 2004-1127 of 247 October 2004 Art. 111 Official Journal of 22 October 2004)*

Art. L. 613-31-2. - I. - The reorganisation measures referred to in this subsection are the measures taken in France or in any other Member State by the administrative or judicial authorities for the purpose of maintaining or re-establishing the financial situation of a credit institution and which affect the pre-existing rights of third parties.

Where they are taken in France and affect said rights, said measures are:

1 The measures referred to in subparagraph 2 of paragraph I of Article L. 612-33 or in paragraph 3 of Article L. 612-39;

3 The court-ordered recovery or reorganisation procedure referred to in Book VI of the Commercial Code.

II. - The liquidation measures referred to in this subsection are the collective procedures initiated and monitored by the administrative or judicial authorities in France or in any other Member State to realise the assets under the supervision of said authorities.

Where they are taken in France, said measures are those covered by Part IV of Book VI of the Commercial Code.

*Inserted by Order No. 2004-1127 of 21 October 2004 Official Journal No. 247 of 22 October 2004*

*Amended by Act No. 2005-845 of 26 July 2005 Art. 165 and 174 I Official Journal of 27 July 2005*

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

Art. L. 613-31-3. – Without prejudice to the provisions of Articles L. 613-31-5 and L. 613-31-6:

1 The reorganisation and liquidation measures decided by the competent authorities of a Member State other than France in relation to a credit institution having its registered office in said State shall retain all their effects in Metropolitan France and the overseas *départements* and also in Saint-Barthélemy and Saint Martin without any other formality, including effects relative to third parties, as soon as they become effective in said State. The same shall apply where such measures are taken in relation to a branch of a credit institution having its registered office outside the European Economic Area;

2 Where they are taken by the competent French public authority in relation to a credit institution registered in France or a branch in France of an entity having its registered office outside the European Economic Area, said measures shall retain all their effects in the other Member States, including effects relative to third parties located in other Member States.

*Inserted by Order No. 2004-1127 of 21 October 2004 Official Journal No. 247 of 22 October 2004*

*Amended by Order No. 2008-698 of 11 July 2008 Art. 1 Official Journal of 16 July 2008*

Art. L. 613-31-4. – The initiation of court-ordered liquidation proceedings against a credit institution shall entail its delisting as a credit institution.

*Inserted by Order No. 2004-1127 of 21 October 2004 Official Journal No. 247 of 22 October 2004*

Art. L. 613-31-5. – As an exception to the provisions of Article L. 613-31-3, the effects of a reorganisation measure or a liquidation procedure within the meaning of Article L. 613-31-2 on the contracts, rights and proceedings enumerated below shall be determined by the following rules:

1 Employment contracts and working relationships shall be governed exclusively by the law of the Member State applicable to said contract or said relationship;

2 Contracts giving entitlement to acquire or to enjoy real estate shall be governed exclusively by the law of the Member State on whose soil said property is located. The same law shall also determine whether said property is movable or immovable;

3 Rights over real estate, a vessel or an aircraft which is subject to registration in a public register shall be governed exclusively by the law of the Member State under whose authority said register is maintained;

4 Clearing agreements, agreements relating to a temporary assignment of financial instruments and those governing transactions carried out within the framework of a regulated market shall remain exclusively governed by the law applicable to said agreements;

5 Rights over financial instruments which require an entry in a register, an account or a centralised depositary system maintained or located in a Member State shall be governed exclusively by the law of said Member State

6 Proceedings pending on the commencement date of the reorganisation measure or the liquidation procedure relating to a property or a right which the credit institution has been compelled to relinquish shall be governed exclusively by the

law of the Member State in which said proceedings are taking place.

*Inserted by Order No. 2004-1127 of 21 October 2004 Official Journal No. 247 of 22 October 2004*

Art. L. 613-31-6. I. - As an exception to the provisions of Article L. 613-31-3, the decision to adopt a reorganisation measure or to initiate a liquidation procedure shall not affect:

1 The rights in rem, within the meaning of the applicable law, of a creditor or of a third party over tangible or intangible assets, whether movable or immovable, belonging to the credit institution and which are located in another Member State on the date of the decision;

2 The vendor's rights founded on a reservation of title, where the asset was in another Member State on the date of the decision;

3 The buyer's right to acquire an asset sold by the credit institution, where the asset was in another Member State on the date of the decision and on the date of delivery;

4 A creditor's right to call for offsetting of his debt against that of the credit institution, where the law applicable to the credit institution's debt so permits.

II. - The foregoing provisions shall not obstruct actions for nullity, actions to set aside or actions for unenforceability of deeds that are prejudicial to the creditors collectively where such actions are permitted by the law of the Member State in which the credit institution's registered office is located.

*Inserted by Order No. 2004-1127 of 21 October 2004 Official Journal No. 247 of 22 October 2004*

Art. L. 613-31-7. - As an exception to the provisions of Article L. 613-31-3 and of paragraph II of Article L. 613-31-6, the provisions of the law of the Member State in which a liquidation procedure is initiated in regard to a Community credit institution via actions for nullity, actions to set aside or actions for unenforceability of deeds that are prejudicial to the creditors collectively shall not apply if the beneficiary of such an action can show that it is subject to the law of another Member State and that said law does not in any way permit it to be contested in the case in question.

In the case of reorganisation measures, the rule laid down in the previous paragraph shall apply only to actions prejudicial to the creditors which predate the adoption of such a measure.

*Inserted by Order No. 2004-1127 of 21 October 2004 Official Journal No. 247 of 22 October 2004*

Art. L. 613-31-8. - Where, in return for payment and through a deed executed after the adoption of a reorganisation measure or the commencement of a liquidation procedure, the credit institution disposes of:

1 An item of real estate;

2 A vessel or an aircraft subject to an entry in a public register;

3 Instruments or rights over instruments whose existence or transfer requires an entry in a register, an account or a centralised depositary system maintained or located in a Member State.

The validity of said deed shall be governed by the law of the Member State in which said real estate is located or under whose authority said register, said account or said depositary system is maintained.

*Inserted by Order No. 2004-1127 of 21 October 2004 Official Journal No. 247 of 22 October 2004*

Art. L. 613-31-9. - The administrator or liquidator appointed by the competent authority of another Member State shall be authorised to exercise all the powers he is authorised to exercise in said State in Metropolitan France and the overseas *départements* and also in Saint-Barthélemy and Saint Martin.

In exercising said powers, the administrator or the liquidator shall comply with French law, particularly in regard to the methods used to realise assets or to provide information to employees. Said powers shall not include execution measures requiring the use of force or the right to rule on a dispute or a disagreement.

The administrator or the liquidator may appoint individuals responsible for assisting them or representing them, *inter alia* in the Member States in which the credit institution's branches are located.

*Inserted by Order No. 2004-1127 of 21 October 2004 Official Journal No. 247 of 22 October 2004*

*Amended by Order No. 2008-698 of 11 July 2008 Art. 1 Official Journal of 16 July 2008*

Art. L. 613-31-10. - A decree issued following consultation with the Conseil d'Etat determines, where necessary, the implementing provisions of this subsection and, in particular, those relating to publication abroad of the measures referred to in Article L. 613-31-3, as well as the information sent to the creditors.

*Inserted by Order No. 2004-1127 of 21 October 2004 Official Journal No. 247 of 22 October 2004*

### Section 3 Specific supervisory scheme

*Numbering changed by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

Art. L. 613-32.

*Repealed by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

Art. L. 613-33. - The Autorité de Contrôle Prudentiel is responsible for monitoring the compliance of the institutions referred to in Articles L. 511-22 and L. 511-23 with the laws and regulations applicable to them under the terms of Article L. 511-24. It may examine their operating conditions and the status of their financial situation, taking due account of the supervision carried out by the competent authorities referred to in paragraph 2 of Article L. 511-21.

It also monitors compliance with the banking profession's conduct of business rules.

It exercises over said institutions the supervisory and disciplinary powers described in sections 5 to 7 of Chapter II. The delisting referred to in paragraph 7 of Article L. 612-39 and in the first paragraph of Article L. 312-5 effectively constitutes a prohibition on the institution continuing to provide banking services in France.

Where an institution referred to in Articles L. 511-22 and L. 511-23 is stripped of its approval or is the subject of a liquidation procedure, or if, in the case of a financial institution, it no longer meets the required conditions within the meaning

of Article L. 511-23, the Autorité de Contrôle Prudentiel shall take the necessary measures to prevent it from commencing new activities in France and to ensure that the depositors' interests are protected.

A decree issued following consultation with the Conseil d'Etat determines the procedures the Autorité de Contrôle Prudentiel follows when exercising the responsibilities and powers conferred on it by the previous paragraphs. It determines, in particular, the procedure for providing information to the competent authorities referred to in Article L. 511-21.

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 80 Official Journal of 7 May 2005*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

Art. L. 613-33-1. – For the purposes of Article L. 612-2 relative to the members of a clearing house established in France who are established outside of France, the Autorité de Contrôle Prudentiel shall take account of the supervision exercised by the competent authorities of each State concerned and, for said purpose, may enter into a bilateral agreement with them, as provided for in Article L. 632-13.

For the exercise of its disciplinary powers, the delisting referred to in paragraph 7 of Article L. 612-39 and in the first paragraph of Article L. 312-5 effectively constitutes a prohibition on the institution's continued membership of a clearing house established in France.

*Inserted by Act No. 2001-1168 of 11 December 2001 Art. 27 13 Official Journal of 12 December 2001*

*Amended by Order No. 2007-1490 of 18 October 2007 Art. 5 Official Journal of 19 October 2007*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

Art. L. 613-33-2. – Without prejudice to the supervision exercised by the competent authorities referred to in paragraph 1 of Article L. 522-12, the Autorité de Contrôle Prudentiel is responsible for monitoring compliance by the entities referred to in paragraph II of Article L. 522-13 with the laws and regulations that apply to them. It may examine the manner in which they conduct their payment services business and the appropriateness of their financial situation for said business.

It shall exercise over said institutions the supervisory and disciplinary powers described in sections 5 to 7 of Chapter II. The delisting referred to in paragraph 7 of Article L. 612-39 effectively constitutes a prohibition on the payment institution providing payment services in France.

Where approval is withdrawn from an entity referred to in paragraph II of Article L. 522-13 or where liquidation proceedings are initiated against it, the Autorité de Contrôle Prudentiel shall take the necessary measures to prevent it from commencing new activities in France and to ensure that the interests of the users of payment services are protected.

A decree issued following consultation with the Conseil d'Etat determines the procedures that the Autorité de Contrôle Prudentiel follows when exercising the responsibilities and powers conferred on it by the previous paragraphs. It determines, inter alia, the procedure for providing information to the competent authorities referred to in Article L. 522-12.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 15 Official Journal of 16 July 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 12 Official Journal of 23 October 2010*

## Section 4 Implementation of the deposit guarantee fund

*Numbering changed by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

Art. L. 613-34. – The Autorité de Contrôle Prudentiel shall consult the Chairman of the Executive Board of the deposit guarantee fund on any matter concerning an institution in respect of which it intends to implement the guarantee fund or for which it intends to propose a precautionary measure by said fund.

The Chairman of the Executive Board shall also be heard, at his request, by the Autorité de Contrôle Prudentiel.

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

## Chapter IV Consultative Authorities

### Section 1 Comité Consultatif du Secteur Financier and Comité Consultatif de la Législation et de la Réglementation Financières

*(Title Art. 22 LSF 2003-706)*

*(Subsection 1 Conseil national du crédit et du titre) Repealed by Article 48 LSF 2003-706*

Art. L. 614-1. – The Comité Consultatif du Secteur Financier is responsible for examining questions relating to the relations between credit institutions, investment firms and insurance companies on the one hand, and their respective clients on the other, and for proposing any appropriate measures in relation thereto, in the form, inter alia, of opinions or recommendations of a general nature.

Questions may be referred to the Comité by the Minister for the Economy, by the organisations that represent the clients and by the professional bodies from which its members are drawn. It may also act on its own initiative at the request of the majority of its members.

The Comité is composed primarily, and in equal numbers, of representatives of the credit institutions, the payment institutions, the investment firms, the insurance companies, the general insurance agents and the insurance brokers on the one hand, and of the clients' representatives on the other.

The composition of the Comité, the conditions of appointment of its members and of its Chairman, and its organisational and operating rules, are determined by decree.

**The Comité is responsible for monitoring the trend of the fees that credit institutions and payment institutions apply for services provided to individuals for non-business purposes.**

*Amended by Act No. 2003-706 of 1 August 2003 Art. 22 I, II, Art. 48 II 3 Official Journal of 2 August 2003*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 15 Official Journal of 16 July 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 45 Official Journal of 23 October 2010*

Art. L. 614-2. Any proposed government bill or order and any Community regulation or directive relating to the insurance sector, the banking sector or investment firms shall be referred to the Comité Consultatif de la Législation et de la Réglementation Financières by the Minister for the Economy for an opinion before it is examined by the Council of the European Communities, save for the texts that relate to the Autorité des Marchés Financiers or which come within its area of competence.

Draft decrees or orders, other than individual measures, relating to the same areas may be adopted only after the opinion of the Comité Consultatif de la Législation et de la Réglementation Financières has been sought. Its opinion shall also be sought by the Minister for the Economy concerning requests for approval of the conduct of business rules referred to in Article L. 611-3-1. An unfavourable opinion from the Comité on said draft documents cannot be disregarded until the Minister for the Economy has requested a second deliberation by said Comité.

The composition of the Comité, the conditions of appointment of its members and of its Chairman, as well as its organisational and operating rules, are determined by decree.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 22 I, Art. 26 I, Art. 48 II 3 Official Journal of 2 August 2003*

*Amended by Order No. 2008-1271 of 5 December 2008 Art. 1 Official Journal of 6 December 2008*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 15 Official Journal of 16 July 2009*

Art. L. 614-3. – The salaried employees who are members of the Comité Consultatif du Secteur Financier or of the Comité Consultatif de la Législation et de la Réglementation Financières shall be given sufficient time to ensure that they are able to prepare for, travel to and participate in the meetings. Said time shall be treated as effective working time for the calculation of social-security benefit entitlement. Said employees must inform their employer of their appointment, and of each meeting, as soon as they receive the notice to attend.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 22 I, Art. 27 I, Art. 48 II 3 Official Journal of 2 August 2003*

*Arts. L. 614-4 to L. 614-6 repealed by LSF 2003-706 Art. 48)*

*(Subsection 2 Comité Consultatif repealed by Article 48 LSF 2003-706 reference replaced by the reference to the Comité Consultatif du Secteur Financier LSF, Art. 46, V, 3)*

*(Section 2 Haut Conseil du Secteur Financier Public et Semi-Public Repealed by decree No. 2008-1029 of 9 October 2008 Official Journal of 10 October 2008 and decision No. 2008-212 L of 18 September 2008 Art. L. 614-7 repealed)*

## Chapter V Other institutions

*Inserted by Act No. 2006-387 of 31 March 2006 Art. 26 Official Journal of 1 April 2006*

## Section 1 Government representatives and supervision of financial activities

*Section numbering changed by Order No. 2009-866 of 15 July 2009 Art. 15 Official Journal of 16 July 2009*

Art. L. 615-1. - The Minister for the Economy shall appoint a Government representative to any central body referred to in Article L. 511-30 or to any credit institution to which the State has entrusted the exercise of State authority or a public interest mission.

A decree issued following consultation with the Conseil d'Etat determines the implementing provisions of this article. It specifies, inter alia, the circumstances in which the Government representative may challenge the decisions of the central body's deliberative bodies or those of the credit institution regarding the implementation of the exercise of State authority or of the public-interest mission which have been entrusted to him.

*Inserted by Act No. 2006-387 of 31 March 2006 Art. 26 Official Journal of 1 April 2006 (formerly Article L.511-32 II)*

## Section 2 The Banking Mediation Commission

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 15 Official Journal of 16 July 2009*

Art. L. 615-2. – The Banking Mediation Commission is responsible for examining the mediators' reports and drawing up a banking mediation report each year which is sent to the Comité Consultatif du Secteur Financier. Said Comité is also tasked with laying down the terms and conditions under which the mediators' duties are performed, with particular emphasis on ensuring their independence. It is informed of the terms, and the amount, of the allowances and compensation paid to mediators by credit institutions or payment institutions. Said Comité may send recommendations to credit institutions, payment institutions and mediators.

The Banking Mediation Commission is chaired by the Governor of the Banque de France or his representative. The other members are appointed by order of the Minister for the Economy, with seat allocation as follows: one individual proposed by the Collège de Consommateurs et Usagers du Conseil National de la Consommation (Board of Users and Consumers of the National Consumers Council), one individual proposed by the Association Française des Établissements de Crédit et des Entreprises d'Investissement (French Association of Credit Institutions and Investment Firms) and two individuals chosen on account of their expertise.

A decree issued following consultation with the Conseil d'Etat determines the implementing provisions of this article.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 15 Official Journal of 16 July 2009*

# PART II THE AUTORITE DES MARCHES FINANCIERS

*(Title replaced by LSF 2003-706)*



## Sole chapter The Autorité des Marchés Financiers

*(Title replaced by LSF 2003-706)*

### Section 1 Duties

Art. L. 621-1. - The Autorité des Marchés Financiers (AMF), an independent public authority with legal personality, oversees the protection of savings invested in the financial instruments and assets referred to in paragraph II of Article L. 421-1 which give rise to an offer to the public or to admission to trading on a regulated market and in any other investment offered to the public. It also monitors disclosure to investors and the orderly operation of the markets in the financial instruments and assets referred to in paragraph II of Article L. 421-1. It lends its support to the regulation of said markets at a European and an international level.

**In carrying out its duties, the Autorité des Marchés Financiers takes account of the objectives of financial stability throughout the European Union and the European Economic Area and convergent implementation of the domestic and European Union provisions while also embracing the best practices and recommendations deriving from the European Union's provisions relating to supervision. It cooperates with the competent authorities of the other States.**

It also ensures that the entities subject to its supervision implement the appropriate means to comply with the approved conduct of business rules referred to in Article L. 611-3-1.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 2 Official Journal of 2 August 2003*

*Amended by Order No. 2008-1271 of 5 December 2008 Art. 1 Official Journal of 6 December 2008*

*Amended by Order No. 2009-80 of 22 January 2009 Art. 6 Official Journal of 23 January 2009*

*Amended by Act No. 2009-526 of 12 May 2009 Art. 138 Official Journal of 13 May 2009*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 3 and 9 Official Journal of 23 October 2010*

### Section 2 Composition

Art. L. 621-2. **I** - I-The Autorité des Marchés Financiers consists of a Board, an Enforcement Commission and, where required, specialised commissions and consultative commissions.

Except as otherwise herein provided, the responsibilities entrusted to the Autorité des Marchés Financiers shall be exercised by the Board.

II.-The Board is composed of sixteen members:

1. A chairman, appointed by decree;
2. A councillor of the Conseil d'Etat designated by the Vice-President of said body;
3. A justice of the court of cassation designated by the Chief Justice of said court;
4. A senior member of the court of auditors (Cour des Comptes) designated by the Auditor General;

5. A representative of the Banque de France designated by its governor;

6 The Chairman of the Autorité des Normes Comptables;

7 Three members with legal and financial expertise and experience in securities issuance, financial-instrument admission to trading on a regulated market and financial-instrument investments, designated by the President of the Senate, the President of the National Assembly and the Chairman of the Conseil Economique et Social (Economic and Social Council) respectively;

8 Six members with legal and financial expertise and experience in securities issuance, financial-instrument admission to trading on a regulated market and financial-instrument investments, designated by the Minister for the Economy after consultation with organisations representing securities-issuing industrial and commercial companies and industrial and commercial companies whose securities are admitted to trading on a regulated market, fund management companies and other investors, investment service providers, market undertakings, clearing houses, operators of clearing and settlement systems and central securities depositaries;

9. A representative of the employee shareholders designated by the Minister for the Economy following consultation with the representative labour unions and employee associations.

The Chairman of the Autorité des Marchés Financiers is empowered to act on behalf of the AMF before any court.

The Chairman of the Autorité des Marchés Financiers is subject to the rules of disqualification for public office.

The Chairman's term of office is five years with effect from his appointment. He may not be reappointed.

The term of office of the other Board members, except for those referred to in paragraphs 5 and 6, is five years and they may be reappointed once. After expiry of said five-year period, the members shall remain in office until the first meeting of the newly appointed Board takes place.

If the seat of a Board member, other than the Chairman, becomes vacant for whatever reason, it shall be filled for the unexpired portion of the former member's term of office. A term of office of less than two years shall not be taken into account for application of the reappointment rule laid down in the previous paragraph.

Pursuant to terms set forth in a decree issued following consultation with the Conseil d'Etat, one-half of the members of the Board shall stand down every thirty months. The term of office shall be calculated from the date of the first meeting of the Board.

III.-As determined in a decree issued following consultation with the Conseil d'Etat, the Board may delegate authority to make decisions of individual scope to specialised commissions composed of its members and chaired by the AMF Chairman.

The Board may also set up consultative commissions of experts to assist it in preparing decisions.

IV.-The Autorité des Marchés Financiers has an Enforcement Commission responsible for imposing the sanctions referred to in Articles L. 621-15 and L. 621-17.

The Enforcement Commission has twelve members:

1 Two councillors of the Conseil d'Etat designated by the Vice-President of that body;

2 Two justices of the court of cassation designated by the Chief Justice of said court;

3 Six qualified individuals with legal and financial expertise and experience in securities issuance, admission to trading on a regulated market of financial instruments and investment of savings in financial instruments, designated by the Minister for the Economy following consultation with the organisations that represent the industrial and commercial companies whose financial instruments are offered to the public or are admitted to trading on a regulated market, the fund management companies and other investors, the investment service providers, the market undertakings, the clearing houses, the operators of clearing and settlement systems, and the central securities depositaries;

4 Two representatives of the employees of the investment service providers, fund management companies, market undertakings, clearing houses, operators of clearing and settlement systems and central securities depositaries, designated by the Minister for the Economy following consultation with the representative labour unions.

The Chairman is elected by the members of the Commission from among the individuals referred to in paragraphs 1 and 2.

The Commission may establish divisions of six members each, chaired by one of the individuals referred to in paragraphs 1 and 2.

The functions of members of the Enforcement Commission are incompatible with those of Board members.

Enforcement Commission members serve a five-year term of office and may be reappointed once.

After expiry of the five-year period, the members shall remain in office until the first meeting of the reappointed Commission takes place.

In the event of an Enforcement Commission member's seat becoming vacant for whatever reason, it shall be filled for the unexpired portion of the former member's term of office. A term of office of less than two years shall not be taken into account for application of the reappointment rule laid down in the previous paragraph.

Pursuant to terms set forth in a decree issued following consultation with the Conseil d'Etat, one-half of the members of the Enforcement Commission shall stand down every thirty months. The term of office shall run from the date of the first meeting of the Commission.

V.-The employees appointed as members of the Autorité des Marchés Financiers shall be given sufficient time to ensure that they can prepare for, travel to and participate in the meetings. Such time shall be treated as effective working time for the calculation of social-security benefit entitlement. The employees concerned must inform their employer of their appointment, and of each meeting, as soon as they receive the notice to attend.

*Amended by Act No. 2001-420 of 15 May 2001 Art. 24 Official Journal of 16 May 2001*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 3 Official Journal of 2 August 2003*

*Amended by Order No. 2009-79 of 22 January 2009 Art. 6 Official Journal of 23 January 2009*

*Amended by Order No. 2009-80 of 22 January 2009 Art. 6 Official Journal of 23 January 2009*

## Section 3 Operating rules

Art. L. 621-3. - I. - **The Director General of the Treasury or his representative attends all the sessions of the Autorité des Marchés Financiers, without voting rights.** The decisions of the Enforcement Commission are taken in his absence. He may, other than in relation to sanctions, request a second deliberation under conditions determined in a decree issued following consultation with the Conseil d'Etat.

II. - The decisions of each session of the Autorité des Marchés Financiers shall be taken on a majority of the votes cast. In the event of there being a tied vote, other than in relation to sanctions, the Chairman shall have a casting vote.

In the event of an emergency duly declared by its Chairman, the Board may, other than in relation to sanctions, deliberate by means of written consultation.

A decree issued following consultation with the Conseil d'Etat determines the rules applicable to the proceedings of the Autorité des Marchés Financiers' sessions.

The General Regulation of the Autorité des Marchés Financiers determines the implementing provisions of said rules.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 4 Official Journal of 2 August 2003*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 6 Official Journal of 23 October 2010*

Art. L. 621-4. I. - Any member of the Autorité des Marchés Financiers must inform the Chairman of:

1 The interests he held during the two years preceding his appointment, and those he currently holds or comes to hold;

2 The economic or financial functions he performed during the two years preceding his appointment and those he currently performs or comes to perform;

3 Any remit within a legal entity held by him during the two years preceding his appointment and those he currently holds or comes to hold;

Said information, and that concerning the Chairman, shall be made available to the members of the Autorité des Marchés Financiers.

No member of the Autorité des Marchés Financiers may deliberate on a matter in which he himself or, where applicable, a legal entity in which he performed functions or held a remit during the two years preceding the deliberation has an interest, or had one during the same period. Nor may he participate in a deliberation concerning a matter in which he himself or, where applicable, a legal entity in which he performed functions or held a remit during the two years preceding the deliberation, represented one of the parties involved during the same period.

The Chairman of the Autorité des Marchés Financiers shall take the appropriate measures to ensure compliance with the obligations and prohibitions deriving from this paragraph I.

The General Regulation of the Autorité des Marchés Financiers determines the procedures for preventing conflicts of interest.

II.-The members, staff and employees of the Autorité des Marchés Financiers and the experts appointed to the consultative commissions referred to in III of Article L. 621-2 are bound by professional secrecy under the conditions and subject to the penalties provided for in Article L. 642-1.

Such secrecy cannot be invoked against the judicial authorities acting within the scope of criminal proceedings or in connection with court-ordered liquidation proceedings instituted against an entity referred to in paragraph II of Article L. 621-9.

III.-The provisions of Chapter VIII of Part II of Book 1 of the Commercial Code are applicable to members of the Autorité des Marchés Financiers. No individual who has been sanctioned under the provisions of this code during the preceding five years may be a member of the Autorité des Marchés Financiers.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 5 Official Journal of 2 August 2003*

*Amended by Act No. 2005-428 of 6 May 2005 Art. 4 Official Journal of 7 May 2005*

Art. L. 621-5. - A decree issued following consultation with the Conseil d'Etat determines the conditions and limits within which:

1 The Board may delegate authority to its Chairman or, in the event of his being absent or unable to perform his functions, to another of its members, to make decisions of an individual nature which fall within its jurisdiction;

2 The Board may delegate authority to a specialist commission pursuant to paragraph III of Article L. 621-2;

3 The Chairman of the Autorité des Marchés Financiers may delegate his signature in those matters where the laws or regulations grant him specific competence.

*Amended by Act No. 2001-420 of 15 May 2001 Art. 26 Official Journal of 16 May 2001*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 6 Official Journal of 2 August 2003*

Art. L. 621-5-1. - The AMF departments are managed by a Secretary General. To fill said post, the AMF Chairman submits a proposal to the Board, which deliberates thereon and formulates an opinion within one month. Upon expiry of said time limit, the Secretary General is appointed by the Chairman. Said appointment is subject to the approval of the Minister for the Economy. Until such time as the Secretary General is appointed, his functions may be performed by an individual designated by the Chairman of the AMF.

The staff of the Autorité des Marchés Financiers is composed of public-law contract employees and private-law employees. As determined in a decree issued following consultation with the Conseil d'Etat, public-sector employees may be seconded to the Autorité des Marchés Financiers in a position provided for in the rules which govern them.

The provisions of Articles L.2111-1, L.2141-4, L.2311-1 and L.2312-1 to L. 2312-5, L. 2321-1, L. 2322-1 to L. 2322-4, L. 4523-11 and L. 4523-12, L. 4523-14 to L. 4523-17 and L. 4524-1 of the Labour Code shall be applicable to the staff of the Autorité des Marchés Financiers. Said provisions may nevertheless be subject to amendments set forth in a decree issued following consultation with the Conseil d'Etat.

On a proposal from the Secretary General, the Board determines the bylaws and ethical rules applicable to the staff of the Autorité des Marchés Financiers and establishes the general framework of remuneration. The Secretary General reports to the Board on the management of the units in the manner determined by the latter.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 7 I Official Journal of 2 August 2003*

Art. L. 621-5-2. - The Autorité des Marchés Financiers has financial autonomy. Its budget is decided by the Board on a proposal from the Secretary General. The provisions of the Act of 10 August 1922 relating to the organisation of cost control do not apply to it.

It receives the revenue from the taxes established in Article L. 621-5-3.

A decree issued following consultation with the Conseil d'Etat determines its members' compensation scheme, its accounting system and the implementing provisions of paragraph I.

II. - The real estate of the Banque de France is subject to the provisions of the Code Général de la Propriété des Personnes Publiques (General Code of Public Entities' Property) applicable to State public entities.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 7 I Official Journal of 2 August 2003*

*Amended by Order No. 2006-460 of 21 April 2006 Art. 3 Official Journal of 22 April 2006*

Art. L. 621-5-3. I. - A fixed rate of duty shall be due from the entities subject to the supervision of the Autorité des Marchés Financiers, where the legislation or regulations so provide, in the following cases:

1 Where the Autorité des Marchés Financiers publishes a declaration made by an entity, acting jointly or alone, pursuant to Articles L. 233-7 or L. 233-11 of the Commercial Code. The duty payable, as determined by decree, shall be above 500 euros and below or equal to 1,000 euros, due on the day of filing of said document;

2 Upon examination of the obligation to file a public offer, the duty payable, as determined by decree, shall be above 2,000 euros and below or equal to 4,000 euros, due on the day on which the decision of the Autorité des Marchés Financiers is made known;

3 Upon inspection of an annual reference document or the basic document submitted by a company whose shares are admitted to trading on a regulated market pursuant to Article L. 621-18. The duty payable, as determined by decree, shall be above 500 euros and below or equal to 1,000 euros, due on the day of filing of said document;

4 When the marketing in France of an undertaking for collective investment subject to the legislation of a Foreign State, or a compartment of such an undertaking, is authorised, the duty payable, as determined by decree, shall be above 1,000 euros and below or equal to 2,000 euros, due on the day on which the application for authorisation is made in the first year and on 30 April in subsequent years;

5 Upon the submission by an issuer of an information document concerning a debt instrument issuance programme requiring prior registration by the Autorité des Marchés Financiers pursuant to Article L. 621-8 or relating to financial futures referred to in paragraph II of Article L. 211-1, the duty payable, as determined by decree, shall be above 1,000 euros and below or equal to 2,000 euros, due on the day of filing of said document;

6 Upon issuance of each tranche of warrants on the basis of an information document subject to the prior approval of the Autorité des Marchés Financiers pursuant to Article L. 621-8. The duty payable is set at 150 euros per tranche, due on the day of issue;

7 Upon the filing with the Autorité des Marchés Financiers of an information document or draft model contract relating to a miscellaneous property investment plan governed by Articles

L. 550-1 to L. 550-5, the duty payable, as determined by decree, shall be above 6,000 euros and below or equal to 8,000 euros, due on the day of filing of said document.

II.- A contribution shall be due from the entities subject to the supervision of the Autorité des Marchés Financiers, where the legislation or regulations so provide, in the following cases:

1 Where a public purchase, withdrawal or price guarantee offer is made. The contribution shall be the sum of a duty set at 10,000 euros, on the one hand, and, on the other hand, an amount equal to the value of the financial instruments bought, exchanged, presented or covered, multiplied by a rate, determined by decree, which cannot be above 0.30‰ where the securities involved give, or could give, direct or indirect access to the capital or the voting rights, and 0.15‰ in other cases.

Said contribution shall be payable by any initiator of a bid, regardless of the result, on the day on which the results of the procedure are published;

2 Upon submission by an issuer of an information document concerning an issue, a public transfer, an admission to trading on a regulated market or a redemption of securities subject to the prior approval of the Autorité des Marchés Financiers pursuant to Article L. 621-8. Said contribution shall be based on the value of the financial instruments at the time of the transaction. The rate thereof, determined by decree, cannot be above 0.20‰ where the securities involved give, or could give, access to the capital, and 0.05‰ where the transaction relates to debt instruments.

The same contribution shall be payable where securities are redeemed within the framework of the redemption programme implemented by the issuer.

The contribution shall be payable on the day of closure of the procedure, or, in the case of a redemption of securities, on the day of publication of the result. The amount thereof cannot be below 1,000 euros where the securities involved give, or could give, access to the capital, and cannot be above 5,000 euros in other cases;

3 For the supervision of the entities referred to in subparagraphs 1 to 8 of paragraph II of Article L. 621-9, said contribution shall be calculated as follows:

a) For the entities referred to in subparagraphs 1 and 2 of paragraph II of Article L. 621-9, the contribution shall be set at an amount per investment service for which they are authorised other than the investment service referred to in paragraph 4 of Article L. 321-1, and per related service for which they are authorised, as determined by decree, which shall be above 3,000 euros and below or equal to 5,000 euros. Said amount shall be multiplied by two if the equity capital of the entity concerned is above 45 million euros and below or equal to 75 million euros, by three if it is above 75 million euros and below or equal to 150 million euros, by four if it is above 150 million euros and below or equal to 750 million euros, by six if it is above 750 million euros and below or equal to 1.5 billion euros and by eight if it is above 1.5 billion euros; the contribution payable by all the entities within the same group or by a group of entities affiliated to a central body within the meaning of Article L. 511-30, and by that body, cannot exceed an amount set by decree which is above 250,000 euros and below or equal to 1.5 million euros;

b) For the entities referred to in subparagraph 4 of paragraph II of Article L. 621-9, the contribution shall be equal to an amount determined by decree which is above 500 euros and below or equal to 1,000 euros;

c) For the entities referred to in subparagraphs 3, 5 and 6 of paragraph II of Article L. 621-9, the contribution shall be set at an amount equal to the operating income achieved by them in the previous financial year and declared within three months of

its closure at the latest, multiplied by a rate set by decree which cannot exceed 0.9%;

d) For the investment service providers authorised to provide the investment service referred to in paragraph 4 of Article L. 321-1 and the entities referred to in subparagraphs 7 and 8 of paragraph II of Article L. 621-9, the contribution shall be set at an amount equal to the outstanding units or shares of undertakings for collective investment and investment entities subject to foreign law, and of the assets under management, regardless of the country in which the assets are held or entered in the books, multiplied by a rate set by decree which cannot exceed 0.015‰ and which cannot be below 1,500 euros. The outstanding amounts shall be calculated as of 31 December of the previous year and declared by 30 April at the latest;

4 For the supervision of the entities referred to in subparagraph 10 of paragraph II of Article L. 621-9, said contribution shall be equal to an amount determined by decree which shall be above 500 euros and below or equal to 1,000 euros. **The institution that maintains the sole register referred to in Article L. 512-1 of the Insurance Code shall send the Autorité des Marchés Financiers a list of said entities drawn up as of 1 January of each financial year.**

**5 For the supervision of the entities referred to in subparagraph 16 of paragraph II of Article L. 621-9, said contribution shall be calculated as follows:**

**a) The duty payable upon registration, due on the day of filing of the application for registration, is determined by decree at an amount above 7,500 euros and below or equal to 20,000 euros;**

**b) For each year following the year of registration, the contribution shall be set at an amount equal to the operating income achieved during the previous financial year multiplied by a rate set by decree which cannot exceed 0.5% and cannot be below 10,000 euros. It shall be due three months after the end of the financial year.**

III. - The decrees referred to in this article are issued after consultation with the Board of the Autorité des Marchés Financiers.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 7 I Official Journal of 2 August 2003*

*Amended by Act No. 2006-1771 of 30 December 2006 Art. 111 Official Journal of 31 December 2006*

*Amended by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*Amended by Order No. 2009-15 of 8 January 2009 Art. 5 Official Journal of 9 January 2009*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 11 and 36 Official Journal of 23 October 2010*

Art. L. 621-5-4. - The duties and contributions referred to in Article L. 621-5-3 shall be calculated, authorised and collected according to the terms laid down for the revenues of the public administrative institutions of the State. Disputes relating to said duties and contributions shall be heard by the Administrative Court.

They shall be paid as and when determined by decree.

Payment shall be due thirty days from receipt of the notice to pay. The amount due shall attract monthly interest at the legal rate with effect from the thirty-first day following the date of receipt of the notice to pay, with any month begun counting as a whole month.

Where a party liable to pay a duty or a contribution does not provide the requested information required to determine the base for the contribution and its collection, the amount of the contribution shall be increased by 10%.



The increase may be raised to 40% if the document containing the information is not filed within thirty days of receipt of a formal demand sent by registered letter requiring production within said time limit, and to 80% if said document has not been delivered within thirty days of receipt of a second formal demand delivered in the same manner as the first.

The increases referred to in the two previous paragraphs cannot be imposed until thirty days have elapsed since delivery of the document informing the liable party of the intention to apply the envisaged increase to it, the grounds therefor and the opportunity said party has to present its observations within said time limit.

The investigators of the Autorité des Marchés Financiers, empowered as provided for in Article L. 621-9-1, shall check the declarations. For said purpose, they may request from the parties required to pay a duty or a contribution any information, proof or clarification regarding the declarations submitted.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 7 I Official Journal of 2 August 2003*

## Section 4 Powers

### Subsection 1 Regulation and decisions

*(title subsection Amended by Art. 8 LSF 2003-706)*

Art. L. 621-6. - In the performance of its duties, the Autorité des Marchés Financiers applies a General Regulation which is published in the Official Journal of the French Republic following approval by order of the Minister for the Economy.

The Autorité des Marchés Financiers may make decisions of individual scope when applying its General Regulation and in exercising its other competences. It may also publish instructions and recommendations to clarify the interpretation of the General Regulation.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 8 I, II Official Journal of 2 August 2003*

Art. L. 621-7. - The General Regulation of the Autorité des Marchés Financiers determines, inter alia:

I.-The rules of professional practice applicable to issuers who issue securities or whose financial instruments are admitted to trading on a regulated market, as well as the rules which must be complied with in transactions relating to the financial instruments and assets referred to in paragraph II of Article L. 421-1 which are admitted to trading on a regulated market or on a multilateral trading facility that is subject to the laws or regulations intended to protect investors from insider dealing, price manipulation and the dissemination of false information.

II.-The rules regarding takeover bids relating to securities admitted to trading on a regulated market.

III.-The conduct of business rules and the other professional obligations that must be complied with at all times by the legal entities and individuals referred to in paragraph II of Article L. 621-9.

IV.-For investment service providers, market undertakings, members of the regulated markets and clearing houses and their members:

1 The conditions under which investment service providers render the services described in Article L. 321-2;

2 The conditions of membership and professional practice referred to in Article L. 440-2 which apply to the members of the clearing houses;

3 The conditions under which a professional licence may be issued to, or withdrawn from, individuals placed under the authority, or acting on behalf of, investment service providers, market undertakings, members of the regulated markets, and clearing houses and their members;

4 The rules applicable to the legal entities and individuals referred to in Article L. 532-18-1;

5 The conditions under which, pursuant to Article L. 440-1, the Autorité des Marchés Financiers approves the rules of clearing houses, without prejudice to the powers conferred on the Banque de France by Article L. 141-4.

6 The conditions under which the members of a regulated market may conduct transactions in assets referred to in paragraph II of Article L. 421-1 for own account and for a third party.

V.-Concerning management activities carried out for third parties and collective investments:

1 Approval and conduct of business conditions for portfolio management companies;

2 Approval and conduct of business conditions for companies that manage collective investment undertakings;

3 Approval conditions for collective investment undertakings;

4 Conduct of business conditions for depositaries of collective investment undertakings.

VI.-Concerning the custody and administration of financial instruments, the central securities depositaries and the settlement systems for financial instruments:

1 The conditions under which legal entities which issue securities or admit financial instruments to trading on a regulated market and likewise the intermediaries authorised to do so as provided for in Article L. 542-1 may provide custody or administration of financial instruments;

2 The conditions under which central securities depositaries shall be approved by the Autorité des Marchés Financiers and the conditions applicable to the AMF's approval of their operating rules;

3 The general organisational and operational principles of the systems used for settlement and delivery of financial instruments and the terms of approval of their operating rules by the Autorité des Marchés Financiers, without prejudice to the powers conferred on the Banque de France by Article L. 141-4.

VII. Concerning regulated markets within the meaning of Article L. 421-1, market undertakings and multilateral trading facilities:

1 The general organisational and operational principles the regulated markets must comply with, and the rules relating to the execution of transactions in the financial instruments and assets referred to in Article L. 421-1 admitted to said markets;

2 The conditions under which the Autorité des Marchés Financiers, pursuant to Articles L. 421-4, L. 421-5 and L. 421-10, proposes the recognition, review or withdrawal of regulated market status within the meaning of Article L. 421-1;

3 The general organisational and operational principles of multilateral trading facilities;

4 The general organisational and operational principles of the market undertakings as provided for in paragraph III of Article L. 421-11;

5 The conditions under which the Autorité des Marchés Financiers authorises a market undertaking to run a multilateral trading facility, pursuant to the provisions of the second paragraph of Article L. 424-1;

6 The rules relating to reporting to the Autorité des Marchés Financiers and to the public on the orders, transactions and positions on the financial instruments and assets referred to in paragraph II of Article L. 421-1 admitted to trading on a regulated market.

VIII.- Concerning entities, other than those referred to in subparagraphs 1 and 7 of paragraph II of Article L. 621-9, which produce and circulate financial analyses:

1 The conditions under which the individuals or entities referred to in Article L. 544-1 conduct their business;

2 The conduct of business rules applicable to individuals placed under the authority, or acting on behalf, of entities which produce and circulate financial analyses in the normal course of their business, and the provisions intended to ensure the independence of their opinions and the prevention of conflicts of interest.

IX.- The rules relating to investment recommendations intended for the public concerning any issuer whose financial instruments are admitted to trading on a regulated market or concerning a financial instrument issued by it, where they are produced or disseminated by any legal entity or individual in connection with its/his business activities, as well as the rules applicable to legal entities and individuals which/who carry out investment research or disseminate its results or which/who produce or disseminate other information recommending or suggesting an investment strategy for assets referred to in paragraph II of Article L. 421-1 which is intended for distribution channels or the public.

A decree issued following consultation with the Conseil d'Etat stipulates the cases in which information relating to a financial instrument or an asset referred to in paragraph II of Article L. 421-1 given to the public constitutes production or dissemination of an investment recommendation within the meaning of the previous paragraph.

X.-The implementing rules for the publication and reporting requirements stipulated in this code to ensure transparency of the financial markets which call for filing or dissemination in the press and electronically, or free provision of leaflets, in connection with the issuance of securities or the admission of financial instruments to trading on a regulated market.

XI.-Concerning the credit rating service:

1 The registration and conduct of business conditions for the credit rating agencies referred to in Article L. 544-4;

2 The obligations relating to the presentation and publication of ratings and the publication requirements imposed on the credit rating agencies referred to in Article L. 544-4;

3 The conduct of business rules applicable to individuals placed under the authority, or acting on behalf, of the credit rating agencies referred to in Article L. 544-4 and the provisions intended to ensure the independence of their opinions and the prevention of conflicts of interest;

4 The arrangements for the annual publication of the general remuneration scheme for the credit rating agencies

referred to in Article L. 544-4, by category of issuers and products rated..

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 8 I, III Official Journal of 2 August 2003*

*Amended by Act No. 2005-842 of 26 July 2005 Art. 26 and 29 Official Journal of 27 July 2005*

*Amended by Act No. 2007-212 of 20 February 2007 Art. 9 I Official Journal of 21 February 2007*

*Amended by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*Amended by Order No. 2009-80 of 22 January 2009 Art. 6 Official Journal of 23 January 2009*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 9, 11 and 25 Official Journal of 23 October 2010*

Art. L. 621-7-1. – The General Regulation of the Autorité des Marchés Financiers may also lay down rules relating to the information provided to the Autorité des Marchés Financiers and to the public concerning the orders, **transactions and positions** in financial instruments not admitted to trading on a regulated market.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 25 Official Journal of 23 October 2010*

Art. L. 621-7-2. - In the event of the Autorité des Marchés Financiers failing to act despite a formal demand sent by the Minister for the Economy, the urgent measures necessitated by the circumstances shall be stipulated by decree.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 8 IV Official Journal of 2 August 2003*

*Numbering changed by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007 (formerly Article L. 621-7-1)*

## Subsection 2 Authorisation of public issues

*Title of the subsection amended by Act No. 2005-842 of 26 July 2005 Art. 26 Official Journal of 27 July 2005*

Art. L. 621-8. I. - The draft document referred to in Article L. 412-1, or any equivalent document required by the legislation of another State party to the European Economic Area Agreement, shall be subject to prior approval from the Autorité des Marchés Financiers for any transaction carried out in the European Economic Area where the issuer of the securities to which the transaction relates has its registered office in France and where the transaction involves capital securities or securities giving access to the capital within the meaning of Article L. 212-7 or debt instruments having a nominal value below 1,000 euros which are not money market instruments within the meaning of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, and which have a maturity of under twelve months.

II.- The draft document referred to in paragraph I shall also be subject to prior approval from the Autorité des Marchés Financiers in the cases determined in its General Regulation for any transaction carried out in the European Economic Area where the transaction is carried out in France or where the issuer of the securities to which the transaction relates has its registered office there and where the transaction involves debt instruments, other than securities giving access to the capital within the meaning of Article L. 212-7, conferring the right to buy or sell any other security or giving rise to a cash settlement,

including warrants, or debt instruments having a nominal value greater than or equal to 1,000 euros which are not money market instruments within the meaning of the aforementioned Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004, and which have a maturity of under twelve months.

III.- The draft document referred to in paragraph I shall also be subject to prior approval from the Autorité des Marchés Financiers in the cases determined in its General Regulation for any transaction carried out in the European Economic Area where the issuer of the securities to which the transaction relates has its registered office outside the European Economic Area and where the transaction involves financial instruments whose initial public offer or assignment in the European Economic Area or first admission to a regulated market of a European Economic Area Member State took place in France.

IV.- The draft document referred to in paragraph I shall also be subject to prior approval from the Autorité des Marchés Financiers for any transaction carried out in France which involves financial instruments other than those referred to in paragraphs I and II.

V.- Where the Autorité des Marchés Financiers is not the authority responsible for approving the draft document referred to in paragraph I, it may, as provided for in its General Regulation and at the request of the supervisory authority of another State party to the European Economic Area Agreement, approve the aforementioned draft document.

VI.- In the cases referred to in paragraphs I to III, the Autorité des Marchés Financiers may ask the supervisory authority of another State party to the European Economic Area Agreement to approve the draft document referred to in paragraph I.

Where the supervisory authority of the other European Economic Area Member State agrees to the request, the Autorité des Marchés Financiers shall inform the entity carrying out the transaction thereof within three trading days.

VII.- Save for the cases envisaged in Article L. 412-1, the draft document subject to approval from the Autorité des Marchés Financiers shall be drawn up and published as provided for in its General Regulation.

VIII.- Any new fact or any error or inaccuracy in the information contained in the document referred to in paragraph I approved by the Autorité des Marchés Financiers which is likely to have a significant influence on the valuation of the financial instruments and occurs or is noted between the obtaining of approval and completion of the transaction, shall be recorded in a supplementary note to the document referred to in paragraph I. Said note shall be subject to approval as provided for in the General Regulation of the Autorité des Marchés Financiers.

IX. – Under circumstances and terms stipulated its General Regulation, the prior approval of the Autorité des Marchés Financiers shall also be required where an individual or a legal entity makes a public offer for financial instruments as provided for in Article L. 433-1. The note to which the AMF shall affix its seal of prior approval shall contain the employment details of the individual or legal entity making the public offer.

*Amended by Act No. 2001-420 of 15 May 2001 Art. 4 III Official Journal of 16 May 2001)*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 46 V 1, 2 Official Journal of 2 August 2003*

*Amended by Act No. 2005-842 of 26 July 2005 Art. 26 Official Journal of 27 July 2005*

*Amended by Act No. 2006-387 of 31 March 2006 Art. 3 Official Journal of 1 April 2006*

Art. L. 621-8-1. – I. – Before issuing the approval referred to in Article L. 621-8, the Autorité des Marchés Financiers shall verify that the document is complete and comprehensible and that the information it contains is correctly presented. The Autorité des Marchés Financiers shall indicate any statement to be altered or additional information to be inserted.

The Autorité des Marchés Financiers may also request any explanation or proof, particularly with regard to the issuer's situation, business and results and concerning any guarantors of the financial instruments to which the transaction relates.

II. - The Autorité des Marchés Financiers may suspend the transaction for a period which shall not exceed a limit set by its General Regulation where it has reasonable grounds for suspecting that it breaches the laws or regulations applicable to it.

The Autorité des Marchés Financiers may prohibit the transaction:

1 Where it has reasonable grounds for suspecting that an issue or an assignment breaches the laws or regulations applicable to it;

2 Where it notes that a proposed admission to trading on a regulated market breaches the laws or regulations applicable to it.

*Inserted by Act No. 2005-842 of 26 July 2005 Art. 26 Official Journal of 27 July 2005*

Art. L. 621-8-2. – The General Regulation of the Autorité des Marchés Financiers sets forth the terms and conditions under which procedures involving public offers of securities or the admission of financial instruments to trading on a regulated market may be the subject of marketing actions.

The AMF may prohibit or suspend marketing actions for ten trading days where it has reasonable grounds for suspecting that they breach the provisions of this article.

*Inserted by Act No. 2005-842 of 26 July 2005 Art. 26 Official Journal of 27 July 2005*

*Amended by Order No. 2009-80 of 22 January 2009 Art. 6 Official Journal of 23 January 2009*

Art. L. 621-8-3. – Where the Autorité des Marchés Financiers is not the competent authority for approval of the draft document referred to in paragraph I of Article L. 621-8 and it establishes, relative to a procedure involving a public offer of securities or the admission of financial instruments to trading on a regulated market carried out in France, that irregularities have been committed by the entity carrying out the procedure or by the entities responsible for the placement, it shall duly inform the supervisory authority of the State party to the European Economic Area Agreement that approved said document.

If, despite the measures taken by said authority, or on account of their inadequacy, the issuer or the institutions responsible for the placement continue to violate the laws or regulations applicable to them, the Autorité des Marchés Financiers may, after duly informing the supervisory authority that approved the document, take all necessary measures to protect the investors.

The Autorité des Marchés Financiers shall inform the European Commission of said measures as soon as possible.

*Inserted by Act No. 2005-842 of 26 July 2005 Art. 26 Official Journal of 27 July 2005*

*Amended by Order No. 2009-80 of 22 January 2009 Art. 6 Official Journal of 23 January 2009*

### Subsection 3 Inspections and investigations

*(Amended by LSF 2003-706 article 9)*

Art. L. 621-9. - I. - In the performance of its duties, the Autorité des Marchés Financiers carries out inspections and investigations.

It monitors the conformity of transactions in securities which are offered to the public and in the financial instruments and assets referred to in paragraph II of Article L. 421-1 admitted to trading on a regulated market or on a multilateral trading facility which is subject to the laws and regulations intended to protect investors from insider dealing, price manipulation and the dissemination of false information. The markets in instruments created to represent banking transactions which, pursuant to Article L. 214-4, cannot be held by collective investment undertakings, are not subject to the supervision of the Autorité des Marchés Financiers.

II.- The Autorité des Marchés Financiers also monitors compliance with the professional obligations that the following legal entities and individuals placed under their authority or acting on their behalf must assume pursuant to the laws and regulations:

1 Authorised investment service providers or those conducting their business in France under freedom of establishment as well as legal entities placed under their authority or acting on their behalf;

2 Entities authorised to provide custody or administration of the financial instruments referred to in Article L. 542-1;

3 Central securities depositaries and operators of systems used for settlement and delivery of financial instruments;

4 Members of the regulated markets who are not investment service providers;

5 Market undertakings;

6 Clearing houses for financial instruments;

7 Collective investment undertakings and the companies that manage them;

8 Miscellaneous property intermediaries;

9 The legal entities and individuals authorised to act in the capacity of direct marketers referred to in Articles L. 341-3 and L. 341-4;

10 Financial investment advisors;

11 Entities, other than those referred to in subparagraphs 1 and 7, who produce and disseminate financial analyses;

12 Depositaries of collective investment undertakings;

13 Real-estate appraisers;

14 The legal entities administering the group occupational pension schemes referred to in paragraph I of Article 8 of Order No. 2006-344 of 23 March 2006 or the collective retirement savings plans referred to in Article L. 443-1-2 of the Labour Code;

15 The tied agents referred to in Article L. 545-1;

16 The credit rating agencies referred to in Article L. 544-4;

17 The authorised professional bodies of financial investment advisors referred to in Article L. 541-4.

For entities other than those providing the services referred to in subparagraph 4 of Article L. 321-1 or the entities referred to in subparagraphs 7, 8, 10, 11 and 16 above, in respect of whom the Autorité des Marchés Financiers has sole competence, supervision shall be exercised without prejudice to the competence of the Autorité de Contrôle Prudentiel and, for those referred to in subparagraphs 3 and 6, without prejudice to the powers conferred on the Banque de France by Article L. 141-4.

The Autorité des Marchés Financiers is also responsible for ensuring compliance with the laws and regulations applicable to the investment service providers referred to in Article L. 532-18-1, as provided for in Articles 532-18-2, L. 532-19 and L. 532-21-1.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 9, Art. 10 Official Journal of 2 August 2003*

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 81 Official Journal of 7 May 2005*

*Amended by Order No. 2006-344 of 23 March 2006 Art. 10 Official Journal of 24 March 2006*

*Amended by Order No. 2005-1278 of 13 October 2005 Art. 5 Official Journal of 14 October 2005.*

*Amended by Act No. 2006-1770 of 30 December 2006 Art. 64 IV Official Journal of 31 December 2006*

*Amended by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*Amended by Order No. 2007-1490 of 18 October 2007 Art. 5 Official Journal of 19 October 2007*

*Amended by Order No. 2009-80 of 22 January 2009 Art. 6 Official Journal of 23 January 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 4, 9 and 11 Official Journal of 23 October 2010*

Art. L. 621-9-1. - Where the Secretary General of the Autorité des Marchés Financiers, or the Deputy Secretary General specifically appointed for such purpose, decides to carry out investigations, he shall empower the investigators under the terms laid down in the General Regulation.

The individuals selected for such assignments must meet ethical standards set forth in a decree issued following consultation with the Conseil d'Etat.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 11 I Official Journal of 2 August 2003*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 5 Official Journal of 23 October 2010*

Art. L. 621-9-2. As determined in a decree issued following consultation with the Conseil d'Etat, the Autorité des Marchés Financiers may:

1 Delegate to market undertakings and, where applicable, to clearing houses, the supervision of the business and transactions carried out by the members of a regulated market and by the investment service providers who have transmitted orders on said market. Said delegation is the subject of a memorandum of understanding and may be withdrawn at any time;

2 Have recourse, for its inspections and investigations, to external inspection sources, statutory auditors, experts included on a list of legal experts, or competent individuals, entities or authorities. Said individuals, entities and authorities may



receive remuneration in respect thereof from the Autorité des Marchés Financiers;

3 Delegate to the associations of financial investment advisors referred to in Article L. 541-4 the supervision of their members' activities. Said delegation shall be the subject of a memorandum of understanding and may be withdrawn at any time.

The Board or the Secretary General of the Autorité des Marchés Financiers may request the statutory auditors of companies whose securities are admitted to trading on a regulated market or on a multilateral trading facility which is subject to the laws and regulations intended to protect investors from insider dealing, price manipulation and the dissemination of false information, or for which an application for admission to trading on such markets has been submitted or an expert has been included on a list of legal experts to carry out any additional analysis or verification which they deem necessary for the entities or institutions whose securities are admitted to trading on a regulated market or on a multilateral trading facility which is subject to the laws and regulations intended to protect investors from insider dealing, price manipulation and the dissemination of false information, or for which an application for admission to trading on such markets has been submitted, and also for the entities referred to in paragraph II of Article L. 621-9. The costs and fees shall be borne by the Autorité des Marchés Financiers. The provisions of this paragraph shall also apply to statutory auditors who carry out assignments in the context of securities issuance.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 11 I Official Journal of 2 August 2003*

*Amended by Order No. 2009-80 of 22 January 2009 Art. 6 Official Journal of 23 January 2009*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 4 Official Journal of 23 October 2010*

**Art. L. 621-9-3** - Within the scope of the inspections and investigations referred to in Articles L. 621-9 and L. 621-9-1, professional secrecy may not be raised against the Autorité des Marchés Financiers or, where applicable, the market undertakings or clearing houses, supervisory bodies, entities or authorities referred to in Article L. 621-9-2 where they are assisting the Autorité des Marchés Financiers, with the exception of officers of the law.

For the purposes of this subsection, statutory auditors shall be released from professional secrecy in regard to the Autorité des Marchés Financiers.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 11 I Official Journal of 2 August 2003*

Art. L. 621-10. The investigators may, for the purposes of the investigation, require the submittal of any records on whatever medium, including data kept and processed by telecommunications operators within the purview of Article L. 34-1 of the Post and Telecommunications Code (Code des Postes et Télécommunications) and the service providers referred to in subparagraphs 1 and 2 of paragraph I of Article 6 of Act No. 2004-575 of 21 June 2004 for confidence in the digital economy, and may obtain copies thereof. They may summon and take statements from any individual capable of providing information. They may gain access to business premises.

*Amended by Amended Finance Bill No. 2001-1276 of 28 December 2001 Art. 62 III Official Journal of 29 December 2001*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 9, Art. 11 II Official Journal of 2 August 2003*

*Amended by Act No. 2004-575 of 21 June 2004 for confidence in the digital economy Art. 56 II Official Journal of 22 June 2004*

*Amended by Act No. 2004-669 of 9 July 2004 relating to electronic communications and audiovisual communication services Official Journal of 10 July 2004*

Art. L. 621-11. Any individual summoned shall have the right to be assisted by the advisor of his choice. The terms of the notice to attend and the circumstances in which said right shall be exercised are determined in a decree issued following consultation with the Conseil d'Etat.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 9, Art. 11 III Official Journal of 2 August 2003*

Art. L. 621-12. For the purpose of investigating the violations referred to in Articles L. 465-1 and L. 465-2, the liberty and custody judge of the Regional Court in whose jurisdiction the premises to be searched are located may, at the request of the AMF's Secretary General giving grounds for the search, authorise the AMF's investigators to enter any premises and seize documents.

The judge must verify that the request for authorisation which is submitted to him is well-founded; said request must contain all the information in the AMF's possession which justifies such a search. He shall designate the law enforcement officer who must be in attendance when such measures are enforced and who must keep him informed of their progress.

Said order shall make reference to the right of the occupant of the premises or his representative to be assisted by the advisor of his choice. The exercise of such right shall not give rise to suspension of the search and seizure operations. The means of, and time limit for, appeal shall be indicated in the order.

The order shall be notified verbally and on the spot, at the time of the search, to the occupant of the premises or his representative, who shall receive an exact copy thereof in return for a receipt or an acknowledgement of receipt appended to the minutes provided for in the tenth and eleventh paragraphs of this article. In the absence of the occupant of the premises or his representative, the order shall be notified, after the search, by registered letter with confirmation of receipt. Such notification shall be deemed given on the date of receipt indicated on the advice of delivery. If it cannot be thus notified, the order shall be delivered by a process server. A copy of the order shall be sent to the alleged perpetrator of the offences indicated in the first paragraph by registered letter with confirmation of receipt.

The order referred to in the first paragraph shall be immediately enforceable upon presentation of the minutes. Said order shall be appealable before the presiding judge of the court of appeal or his representative. The parties shall not be required to appoint legal counsel. Under the rules laid down by the Code of Civil Procedure (Code de Procédure Civile), the appeal must be lodged within fifteen days in a declaration handed in or sent to the court registry by registered mail or, with effect from 1 January 2009, by electronic means. Said time limit shall run from the date of handing in, the date of delivery or the date of service of the order. The appeal shall not have suspensive effect. The registry of the Regional Court shall send the case file, without delay, to the registry of the court of appeal, where the parties may consult it. The order of the presiding judge of the court of appeal may be subject to an appeal on points of law under the rules laid down by the Code of Civil Procedure. The time limit for an appeal on points of law is fifteen days.

The search shall take place under the authority and control of the judge who authorised it. He may visit the premises during the inspection and decide to suspend or terminate the inspection at any time.

The search cannot commence before 6.00 a.m. or after 9.00 p.m.; in places open to the public, it may also commence during normal opening hours. It shall be carried out in the presence of the occupant of the premises or his representative; should this prove impossible, the law enforcement officer shall enlist the services of two witnesses who are not under his authority or that of the AMF.

Only the AMF's investigators, the occupant of the premises or his representative and the law enforcement officer may consult the documents before they are seized.

The law enforcement officer shall initiate any appropriate step to ensure the observance of professional secrecy and of the defendant's rights pursuant to the provisions of the third paragraph of Article 56 of the Code of Criminal Procedure. Article 58 of said code shall apply.

Where the search is carried out in the office or home of an advocate, the premises of a press or audiovisual communications undertaking, a doctor's surgery, or the practice of a notary, an attorney or a bailiff, the provisions of Articles 56-1, 56-2 or 56-3 of the Code of Criminal Procedure, as applicable, shall apply.

The minutes recording the search operation shall be drawn up on the spot by the Autorité des Marchés Financiers' investigators. An inventory of the exhibits and documents seized shall be appended thereto. The minutes and the inventory shall be signed by the AMF's investigators and the law enforcement officer, as well as the parties referred to in the fifth paragraph of this article; any refusal to sign shall be recorded in the minutes. If it proves difficult to make an inventory on the spot, the exhibits and documents seized shall be placed under seal. The occupant of the premises or his representative shall be informed that he may be present at the opening of the seals, which shall take place in the presence of the law enforcement officer; the inventory shall then be drawn up.

The presiding judge of the court of appeal shall hear appeals against the conduct of the search or seizure operations authorised pursuant to the first paragraph. The minutes and inventory drawn up upon completion of said operations shall indicate the means of, and time limit for, appeal. The parties shall not be required to appoint legal counsel. Under the rules laid down by the Code of Civil Procedure, the appeal must be lodged within fifteen days via a declaration handed in or sent to the court registry by registered mail or, with effect from 1 January 2009, by electronic means. Said time limit shall run from the date of handing in or delivery of the minutes of the inventory. Said appeal shall not have suspensive effect.

The order of the presiding judge of the court of appeal may be subject to an appeal on points of law under the rules laid down by the Code of Civil Procedure. The time limit for an appeal on points of law is fifteen days.

The order of the presiding judge of the court of appeal may be subject to an appeal on points of law under the rules laid down by the Code of Civil Procedure. The time limit for an appeal on points of law is fifteen days. As soon as they are drawn up, the originals of the minutes of the search and the inventory shall be sent to the judge who issued the order; a copy of said documents shall be sent to the occupant of the premises or to said occupant's representative or, in their absence, shall be sent by registered letter with confirmation of receipt to the occupant of the premises and, where relevant, to the individual indicated in the authorisation given in the order referred to in the first paragraph of this article who may have committed an offence described in Articles L. 465-1 and L. 465-2. If it cannot be thus notified, the order shall be delivered by a process server. Said documents shall indicate the means of, and time limit for, appeal.

Documents which are no longer needed for discovery of the truth shall be returned to the occupant of the premises.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 9, Art. 11 IV Official Journal of 2 August 2003*

*Amended by Order No. 2009-233 of 26 February 2009 Art. 1 Official Journal of 27 February 2009*

#### Subsection 4 Injunctions and emergency measures

*(Amended Art. 12 LSF 2003-706)*

Art. L. 621-13. The presiding judge of the Regional Court may, on a reasoned request from the Chairman or the Secretary General of the Autorité des Marchés Financiers, order the sequestration of the funds, securities, certificates or rights belonging to the individuals or entities the AMF is pursuing, regardless of who holds them. He shall rule via an order made in response to an ex parte application, it being incumbent on any interested party to refer the matter to him. He may likewise place a temporary ban on the business activity.

The presiding judge of the Regional Court may, on a reasoned request from the Chairman or the Secretary General of the Autorité des Marchés Financiers, order, on a summary basis, that an alleged perpetrator be required to make a payment into court.

He shall determine the amount of the sum to be paid into court, the time limit for retention thereof and its allocation.

In the event of the alleged perpetrator being placed under formal investigation, the investigating judge hearing the case shall order the total or partial release of the sum paid into court or the maintenance or raising thereof via a decision rendered pursuant to paragraph 11 of Article 138 of the Code of Criminal Procedure.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 12 I, II Official Journal of 2 August 2003*

Art. L. 621-14. - I. - The Board may, after giving the individual concerned an opportunity to present his explanations, order the cessation, in France and abroad, of all breaches of the obligations imposed by the laws or regulations or by professional rules intended to protect investors from insider dealing, price manipulation and dissemination of false information, and any other breach likely to undermine investor protection or the orderly operation of the market. Such decisions may be disclosed to the public.

The Board has powers identical to those referred to in the previous paragraph to deal with any failure to meet the obligations resulting from the laws or regulations intended to protect investors and the market from insider trading, price manipulation and dissemination of false information committed on French soil in connection with the financial instruments or assets referred to in paragraph II of Article L. 421-1 admitted to trading on a regulated market of another country which is a Member State of the European Community or party to the European Economic Area Agreement or in respect of which an application for admission to trading on such a market has been submitted.

II.- The Chairman of the Autorité des Marchés Financiers may ask the court to order the individual responsible for the practice detected to comply with the laws or regulations and end the irregularity or eliminate its effects.

Said request shall be brought before the presiding judge of the Regional Court of Paris ruling on a summary basis, whose decision shall be immediately enforceable. He may, even without consultation, take any protective measure and impose a

coercive fine payable to the Trésor Public for execution of his order.

If criminal proceedings are brought, the coercive fine, if one has been imposed, shall not be applied until a final decision is made on the merits of the public prosecution.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 12 I, Art. 13 Official Journal of 2 August 2003*

*Amended by Act No. 2005-842 of 26 July 2005 Art. 30 Official Journal of 27 July 2005*

*Amended by Act No. 2010-1249 of 22 October 2010 9 Official Journal of 23 October 2010*

#### Subsection 4 bis Administrative composition

*Subsection inserted by Act No. 2010-1249 of 22 October 2010 Art. 7 Official Journal of 23 October 2010*

**Art. L. 621-14-1.** – Where the investigation or inspection report drawn up by the units of the Autorité des Marchés Financiers indicates breaches committed by an entity referred to in subparagraph 9 of paragraph II of Article L. 621-9, of subparagraphs a) and b) of paragraph II of Article L. 621-15, with the exception of the entities referred to in subparagraphs 3, 5 and 6 of paragraph II of Article L. 621-9, and of the professional obligations referred to in Article L. 621-17, the AMF's Board may, when it notifies the complaints as provided for in the first sentence of the second subparagraph of paragraph I of Article L. 621-15, also send it a proposal for the opening of an administrative settlement procedure.

Said proposal shall suspend the time limit set in the second subparagraph of paragraph I of Article L. 621-15.

Any entity which has received a proposal for the opening of an administrative settlement procedure shall undertake, through an agreement entered into with the Secretary General of the Autorité des Marchés Financiers, to pay the Trésor Public a sum which shall not exceed the maximum amount of the fine that may be incurred under paragraph III of Article L. 621-15.

The agreement shall be submitted to the Board, and then, if it is validated by it, to the Enforcement Commission, which may decide to approve it. The agreement thus approved shall be made public.

Where an approved agreement is not reached or is not complied with, the notice of complaints shall be passed to the Enforcement Commission for implementation of Article L. 621-15.

The decisions of the Board and of the Enforcement Commission referred to in this Article are subject to the means of appeal provided for in Article L. 621-30.

A decree issued following consultation with the Conseil d'Etat determines the implementing provisions of this section.

*Inserted by Act No. 2010-1249 of 22 October 2010 Art. 7 Official Journal of 23 October 2010*

#### Subsection 5 Sanctions

*(Art.14 LSF 2003-706 and Subsection Number Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 82 Official Journal of 7 May 2005)*

**Art. L. 621-15. - I.** - The Board shall review the report of the AMF staff on the investigation or inspection, or the request submitted by the Chairman of the Autorité de Contrôle Prudentiel.

If the Board decides to initiate sanction proceedings, it shall notify the complaints to the individuals concerned and forward the statement of complaints to the Enforcement Commission, which shall appoint a rapporteur from among its members. The Enforcement Commission cannot hear a case based on acts that took place more than three years previously if no action seeking to uncover, declare or punish said acts was carried out during said period.

**A member of the Board, after examining the investigation or inspection report and taking part in the decision to initiate sanction proceedings, shall be invited to the hearing. He shall attend without voting rights. He may be assisted or represented by the Autorité des Marchés Financiers' staff and may submit observations in support of the complaints made and propose a sanction.**

**The Enforcement Commission may hear any AMF employee.**

In urgent cases, the Board may suspend the activities of the entities referred to in subparagraphs a) and b) of paragraph II against whom sanction proceedings are initiated.

If the Board sends the report referred to in the first paragraph to the Public Prosecutor, it may decide to make that fact public.

II.-Following an adversarial procedure, the Enforcement Commission may impose sanctions on the following entities:

a) Entities referred to in subparagraphs 1 to 8 and 11 to 17 of paragraph II of Article L. 621-9 for any breach of professional obligations established by laws, regulations or conduct of business rules approved by the AMF, without prejudice to the provisions of Article L. 612-39;

b) Individuals under the authority of, or acting on behalf of, an entity referred to in subparagraphs 1 to 8 and 11 to 17 of paragraph II of Article L. 621-9 for any breach of professional obligations established by laws, regulations or conduct of business rules approved by the AMF, without prejudice to the provisions of Article L. 612-39;

c) Whoever, in France or abroad, has engaged in or attempted to engage in insider dealing or has engaged in price manipulation, the dissemination of false information or any other violation referred to in the first subparagraph of paragraph I of Article L. 621-14, where such acts relate to:

- a financial instrument or an asset referred to in paragraph II of Article L. 421-1 admitted to trading on a regulated market or on a multilateral trading facility which is subject to the laws and regulations intended to protect investors from insider dealing, price manipulation and the dissemination of false information, or for which an application for admission to trading on such markets has been submitted, as provided for in the General Regulation of the Autorité des Marchés Financiers;

- a financial instrument linked to one or more instruments indicated in the previous paragraph;

d) Whoever, in France, has engaged in or attempted to engage in insider dealing or has engaged in price manipulation, the dissemination of false information or any other violation referred to in the last subparagraph of paragraph I of Article L. 621-14, where such acts relate to:

- a financial instrument or an asset referred to in paragraph II of Article L. 421-1 admitted to trading on a regulated market of another Member State of the European Union or party to the European Economic Area Agreement or for which an



application for admission to trading on such a market has been submitted;

- a financial instrument linked to one or more instruments indicated in the previous paragraph;

e) Whoever, in France or abroad, has engaged in or attempted to engage in the dissemination of false information in connection with the issuance of securities.

### III.-The sanctions applicable are:

a) For the entities referred to in subparagraphs 1 to 8, 11, 12 and 15 to 17 of paragraph II of Article L. 621-9, a warning, a reprimand, or a temporary or permanent ban on providing some or all of the services previously provided and removal from the register referred to in Article L. 546-1. In lieu of, or in addition to, said sanctions, the Enforcement Commission may also impose a fine of up to 100 million euros or ten times the amount of any profit made. The money shall be paid into the guarantee fund to which the sanctioned entity is affiliated or, failing that, to the Trésor Public;

b) For individuals acting under the authority or on behalf of an entity referred to in subparagraphs 1 to 8, 11 and 17 of paragraph II of Article L. 621-9, a warning, a reprimand, a temporary suspension or withdrawal of their professional licence, and a temporary or permanent ban on conducting some or all of their business activities. In lieu of, or in addition to, said sanctions, the Enforcement Commission may also impose a fine of up to 15 million euros or ten times the amount of any profit made in the case of the practices referred to in subparagraphs c) and d) of paragraph II, or, in other cases, up to 300,000 euros or five times the amount of any profit made. The money shall be paid into the guarantee fund to which the entity on whose authority or behalf the sanctioned individual was acting is affiliated; failing that, the money shall be paid to the Trésor Public;

c) For entities other than those referred to in paragraph II of Article L. 621-9 who perpetrate acts referred to in subparagraphs c) and d) of paragraph II, fines of up to 100 million euros or ten times the amount of any profit made. The money shall be paid to the Trésor Public.

The amount of the sanction must be commensurate with the seriousness of the violations and any advantages or profits gained from said violations.

The guarantee fund referred to in subparagraphs a) and b) may, as provided for in its bylaws and subject to a maximum amount of 300,000 euros per annum, allocate a portion of the revenue it receives from the fines imposed by the Enforcement Commission to educational actions in the financial sphere.

III bis- Under the terms laid down in a decree issued following consultation with the Conseil d'Etat, the disqualification of a member of the Enforcement Commission shall be decided at the request of the respondent if there is good reason to question the impartiality of said member.

IV.- The Enforcement Commission rules on the basis of a reasoned decision. The rapporteur shall leave the chamber. No sanction may be imposed unless the respondent or his representative has been heard or, failing that, duly summoned.

IV bis.- The Enforcement Commission's hearings are held in public.

However, without consultation or at the request of the respondent, the Chairman of the session hearing the case may conduct all or part of the proceedings in camera for the sake of public order, national security or if a public hearing would compromise business secrecy or any other legally-protected secret.

V.- The Enforcement Commission's decision shall be made public in the publications, journals or media that it indicates, in a format commensurate with the offence committed and the sanction imposed. The cost thereof shall be borne by the entities sanctioned. However, where its publication could seriously disrupt the financial markets or cause undue damage to the parties involved, the Commission's decision may prohibit its publication.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 14 I, II and 46 VII Official Journal of 2 August 2003*

*Amended by Order No. 2005-429 Art. 83 Official Journal of 7 May 2005*

*Amended by Act No. 2005-842 of 26 July 2005 Art. 30 Official Journal of 27 July 2005*

*Amended by le decree No. 2005-1564 of 15 December 2005 Art. 14 Official Journal of 16 December 2005*

*Amended by Order No. 2006-344 of 23 March 2006 Art. 10 Official Journal of 24 March 2006*

*Amended by Act No. 2006-1770 of 30 December 2006 Art. 64 IV Official Journal of 31 December 2006*

*Amended by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*Amended by Act No. 2008-776 of 4 August 2008 Art. 160 and 161 Official Journal of 5 August 2008*

*Amended by Order No. 2009-80 of 22 January 2009 Art. 6 Official Journal of 23 January 2009*

*Amended by Act No. 2009-526 of 12 May 2009 Art. 138 Official Journal of 13 May 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 4, 6, 24 and 36 Official Journal of 23 October 2010*

Art. L. 621-15-1. If a complaint notified pursuant to the second subparagraph of paragraph I of Article L. 621-15 is likely to constitute an offence referred to in Articles L. 465-1 and L. 465-2, the Board shall immediately forward the investigation or inspection report to the Public Prosecutor for the Regional Court of Paris.

Where the Public Prosecutor for the Regional Court of Paris decides to prosecute on the basis of the facts thus received, he shall inform the Autorité des Marchés Financiers thereof without delay.

The Public Prosecutor for the Regional Court of Paris may send the Autorité des Marchés Financiers, as a matter of routine or at the latter's request, a copy of any document from proceedings relating to the facts thus received.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 14 III Official Journal of 2 August 2003*

Art. L. 621-15-2. – Where an institution referred to in Article L.370-1 of the Insurance Code which offers transactions referred to in Articles L.3334-1 to L.3334-9 and L.3334-11 to L.3334-16 of the Labour Code has violated a provision referred to in the second paragraph of Article L.370-2 of the Insurance Code, the Autorité des Marchés Financiers, on its own initiative or on a referral from the competent authorities, shall notify said offence without delay to the competent authority of the State in which the institution is approved, and shall request it, in cooperation with said supervisory authority, to take the necessary measures to put an end to the violation.

If the violation persists after two months have elapsed since such notification, the Autorité des Marchés Financiers may initiate sanction proceedings against the institution as provided



for in Article L.621-15. The sanctions applicable shall be those referred to in Article L.621-15 (III, a).

The Autorité des Marchés Financiers may decide to defer the initiation of sanction proceedings until expiry of a period allotted to the institution for taking the necessary measures to put an end to the violation.

*Inserted by Order No. 2006-344 of 23 March 2006 Art. 10 Official Journal of 24 March 2006*

Art. L. 621-16. – Where the Enforcement Commission of the Autorité des Marchés Financiers has imposed a financial penalty which has become final before the criminal court judge has given a final ruling on the same facts or related facts, the latter may order that the financial penalty be set off against the fine he imposes.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 14 I, Art. 46 III 29 Official Journal of 2 August 2003*

Art. L. 621-16-1. – **Where a prosecution is instituted** pursuant to Articles L. 465-1 and L. 465-2, the Autorité des Marchés Financiers may bring an independent action for damages. However, it cannot in regard to the same entity and the same facts, concurrently exercise the disciplinary powers it holds according to this code and the right to take civil action.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 16 Official Journal of 2 August 2003*

Art. L. 621-17. – Any violation by the financial investment advisors described in Article L. 541-1 of the laws, regulations and professional obligations which concern them shall incur penalties imposed by the Enforcement Commission pursuant to paragraph I, subparagraphs a) and b) of paragraph III, and paragraphs IV and V of Article L. 621-15.

The amount of the penalty must be commensurate with the seriousness of the breaches committed and any advantages or profits derived from said breaches.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 14 I, Art. 56 Official Journal of 2 August 2003*

Art. L. 621-17-1. – Any breach by individuals or legal entities producing or disseminating investment recommendations intended for the public within the framework of their business activities **or by individuals or legal entities who/which carry out or disseminate research work or produce or disseminate other information recommending or suggesting an investment strategy for the assets referred to in paragraph II of Article L. 421-1, intended for distribution channels or the public**, of the rules laid down in paragraph IX of Article L. 621-7 shall incur the sanctions imposed by the Enforcement Commission pursuant to the terms laid down in Article L. 621-15.

*Inserted by Act No. 2005-842 of 26 July 2005 Art. 29 Official Journal of 27 July 2005*

*Amended by Act No. 2010-1249 of 22 October 2010 9 Official Journal of 23 October 2010*

## Subsection 6 Declaration of suspect transactions

*Subsection inserted by Article 1 of Act No. 2005-811 of 20 July 2005 Official Journal of 21 July 2005 Numbering changed by Act No. 2005-1564 of 15 December 2005 Art. 17 Official Journal of 16 December 2005*

Art. L. 621-17-2. – Credit institutions, investment firms and members of the regulated markets not providing investment services are required to declare to the Autorité des Marchés Financiers without delay any transaction in the financial instruments or assets referred to in paragraph II of Article L. 421-1 carried out for own account or for third parties, if they have reason to suspect that it may constitute insider dealing or price manipulation within the meaning of the General Regulation of the Autorité des Marchés Financiers.

The financial instruments referred to in the first paragraph are the financial instruments admitted to trading on a regulated market or on a multilateral trading facility which is subject to the laws and regulations intended to protect investors from insider dealing, price manipulation and the dissemination of false information, or for which an application for admission to trading on such markets has been submitted, as provided for in the General Regulation of the Autorité des Marchés Financiers, as well as the financial instruments which are linked to them.

*Inserted by Act No. 2005-811 of 20 July 2005 Art.1 Official Journal of 21 July 2005*

*Amended by Order No. 2007-544 of 12 April 2007 - Art. 5 JORF 13 April 2007*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 9 and 24 Official Journal of 23 October 2010*

Art. L. 621-17-3. Where the Autorité des Marchés Financiers sends certain facts or information to the Public Prosecutor for the Regional Court of Paris pursuant to Articles L. 621-15-1 and L. 621-20-1, the declaration referred to in Article L. 621-17-2, which the Public Prosecutor is informed of, shall not be included in the case file.

*Inserted by Act No. 2005-811 of 20 July 2005 Art.1 Official Journal of 21 July 2005*

Art. L. 621-17-4. The General Regulation of the Autorité des Marchés Financiers specifies the circumstances in which the declaration referred to in Article L. 621-17-2 shall be made.

The declaration may be written or verbal. In the latter case, the Autorité des Marchés Financiers shall request written confirmation thereof.

The declaration must contain:

1 A description of the transactions indicating in particular the type of order and the trading method used;

2 The reasons that give rise to the suspicion that the declared transactions may involve insider dealing or price rigging;

3 The means of identifying the entities or individuals on behalf of whom the transactions were carried out and any others involved in them;

4 An indication of whether the transactions were carried out for own account or for third parties;

5 Any other relevant information concerning the declared transactions.

Where some of said elements are unavailable when the declaration is made, the reasons referred to in paragraph 2 must be indicated therein at least. The remaining information must be sent to the Autorité des Marchés Financiers as soon as it becomes available.

*Inserted by Act No. 2005-811 of 20 July 2005 Art.1 Official Journal of 21 July 2005*

Art. L. 621-17-5. – Any senior manager or employee of the entities referred to in Article L. 621-17-2 of this code who informs anyone, and in particular the individuals, entities or parties associated with those on behalf of whom the declared transactions were carried out, of the declaration referred to in said article or who discloses information concerning its outcome, shall incur the penalties provided for in Article 226-13 of the Criminal Code.

*Inserted by Act No. 2005-811 of 20 July 2005 Art.1 Official Journal of 21 July 2005*

Art. L. 621-17-6. Without prejudice to Article 40 of the Code of Criminal Proceedings, to Articles L. 621-15-1, L. 621-17-3 and L. 621-20-1 of this code and to the exercise of the powers invested in the Autorité des Marchés Financiers, the AMF and all of its members, the experts appointed to the consultative commissions referred to in paragraph III of Article L. 621-2, and the members of its staff, are prohibited from disclosing the information gathered pursuant to Article L. 621-17-2. If the Autorité des Marchés Financiers enlists the services of the entities and individuals referred to in Article L. 621-9-2, said prohibition shall extend to them, and likewise to their senior managers and employees.

The fact of a member of the Autorité des Marchés Financiers, an expert appointed to the consultative commissions referred to in paragraph III of Article L. 621-2, a member of its staff or an employee disclosing the content of the declaration or the identity of the entities to which it relates shall incur the penalties stipulated in Article L. 642-1. If the Autorité des Marchés Financiers enlists the services of the persons referred to in Article L. 621-9-2, this prohibition shall extend to them, and likewise to their senior managers and employees.

Where transactions covered by the declaration come under the jurisdiction of the competent authority of another Member State of the European Community or party to the European Economic Area Agreement, the Autorité des Marchés Financiers shall send the declaration to said authority without delay, along with any additional information provided by the declarant at said authority's request, as provided for in Article L. 632-16.

*Inserted by Act No. 2005-811 of 20 July 2005 Art.1 Official Journal of 21 July 2005*

*Amended by Order No. 2007-1490 of 18 October 2007 Art. 5 Official Journal of 19 October 2007*

Art. L. 621-17-7. – No proceedings founded on Article 226-13 of the Criminal Code may be brought in respect of transactions covered by the declaration referred to in Article L. 621-17-2 against senior managers or employees of the entities referred to therein who made said declaration in good faith.

No action for civil damages may be brought against an entity referred to in Article L. 621-17-2, its senior managers or its employees who made said declaration in good faith.

Barring any fraudulent collusion with the initiator of the transaction covered by the declaration, the declarant is released from all liability: no criminal proceedings may be brought against its senior managers or its employees pursuant to Article L. 465-1 or to the first paragraph of Article L. 465-2 of this code or to Articles 321-1 to 321-3 of the Criminal Code, and no administrative sanction proceedings may be brought against them for facts associated with insider dealing or price rigging.

The provisions of this article shall apply even if proof of the culpable or criminal nature of the facts giving rise to the declaration is not furnished or if said facts result in a decision to acquit or dismiss without any penalty being imposed by the

Autorité des Marchés Financiers or by the competent authority referred to in the third paragraph of Article L621-17-6.

*Inserted by Act No. 2005-811 of 20 July 2005 Art.1 Official Journal of 21 July 2005*

## Subsection 7 Other competences

*Subsection Number Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 82 Official Journal of 7 May 2005*

*Numbering changed by Act No. 2005-1564 of 15 December 2005 Art. 17 Official Journal of 16 December 2005*

Art. L. 621-18. – The Autorité des Marchés Financiers shall ensure that the disclosures required by the laws or regulations are regularly made by the issuers referred to in Article L. 451-1-2.

It shall check the information that said issuers disclose. For which purpose it may require the issuers, the entities which control them or are controlled by them and their statutory auditors or other auditors to provide all relevant documents and information.

It may order said issuers to make amending or additional disclosures if any inaccuracies or omissions are found in the documents made public. If the issuers concerned should fail to comply with said order, the Autorité des Marchés Financiers may, after discussion with the issuer, produce such amending or additional documents itself.

The Autorité des Marchés Financiers may make public the observations it makes to an issuer or any other information it considers necessary.

The costs occasioned by the disclosures referred to in the two previous paragraphs shall be met by the issuers concerned.

*Amended by Act No. 2001-420 of 15 May 2001 Art. 3 Official Journal of 16 May 2001*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 46 V 1 Official Journal of 2 August 2003*

*Amended by Act No. 2005-842 of 26 July 2005 Art. 32 Official Journal of 27 July 2005*

Art. L. 621-18-1. – At the request of one or more investment service providers or of an investment service providers' professional body, the Autorité des Marchés Financiers may, after consultation with the Banque de France, certify model contracts for financial instrument transactions.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 46 III 30 and V, 1, 2 or 3 Official Journal of 2 August 2003*

Art. L. 621-18-2. – I. - The individuals referred to in subparagraphs a) to c) shall notify the Autorité des Marchés Financiers of all acquisitions, sales, subscriptions and exchanges of a company's shares and the transactions involving the financial instruments linked to them, and the AMF shall make them public, where such transactions are carried out by:

a) The members of the Board of Directors, the Executive Board or the Supervisory Board, or the general manager, sole general manager, acting general manager or manager of said company;

b) Any other individual who, within the meaning of the General Regulation of the Autorité des Marchés Financiers, is empowered to make management decisions within the issuer regarding its positioning and strategy and also has regular access to privileged information which directly or indirectly concerns said issuer;

c) Individuals having close personal links, as defined in a decree issued following consultation with the Conseil d'Etat, with the individuals referred to in subparagraphs a) and b).

The individuals referred to in subparagraphs a) to c) shall be required to provide the issuer with a copy of the information sent to the Autorité des Marchés Financiers pursuant to the first paragraph. The General Regulation of the Autorité des Marchés Financiers specifies how said information shall be provided to the issuer, and also the way in which the General Meeting of shareholders shall be informed of the transactions referred to in this article.

Paragraph I shall apply to the transactions relating to the shares, and the financial instruments linked to them, of any company whose shares are admitted to trading on a regulated market having its registered office in France or outside the European Economic Area which is subject to the supervision of the Autorité des Marchés Financiers with regard to compliance with the obligation to provide information referred to in Article L. 451-1-1.

II. — The Autorité des Marchés Financiers may, in the circumstances and under the terms determined in its General Regulation, provide for the rules referred to in paragraph I to apply also to the financial instruments traded on any market in financial instruments which is not a regulated market, where the entity managing said market so requests.

**III. – The General Regulation of the Autorité des Marchés Financiers may also determine the obligations to make declarations concerning the transactions carried out in the assets referred to in paragraph II of Article L. 421-1. It also specifies the entities responsible for so doing.**

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 122 Official Journal of 2 August 2003*

*Amended by Act No. 2005-811 of 20 July 2005 Art.3 Official Journal of 21 July 2005*

*Amended by Order No. 2009-80 of 22 January 2009 Art. 6 Official Journal of 23 January 2009*

*Amended by Act No. 2009-526 of 12 May 2009 Art. 138 Official Journal of 13 May 2009*

*Amended by Act No. 2010-1249 of 22 October 2010 9 Official Journal of 23 October 2010*

Art. L. 621-18-3. - Legal entities having their registered office in France whose financial securities are admitted to trading on a regulated market shall make public the information required under the sixth, seventh and ninth paragraphs of Article L. 225-37 of the Commercial Code and under the seventh, eighth and tenth paragraphs of Article L. 225-68 and also under Article L. 226-10-1 of said code in circumstances determined in the General Regulation of the Autorité des Marchés Financiers. Each year, the AMF shall draw up a report on the basis of said information and may approve any recommendation it deems useful.

The Autorité des Marchés Financiers may, in the circumstances and under the terms determined in its General Regulation, provide for the obligation referred to in the first paragraph to apply also to companies having their registered office in France whose financial securities are offered to the public on a multilateral trading system which abides by the laws or regulations intended to protect investors from insider dealing, price rigging and the dissemination of false information, where the entity managing said market so requests.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 122 Official Journal of 2 August 2003*

*Amended by Act No. 2006-1770 of 30 December 2006 Art. 62 Official Journal of 31 December 2006*

*Inserted by Act No. 2008-649 of 3 July 2008 Art. 30 Official Journal of 4 July 2008*

*Amended by Order No. 2009-80 of 22 January 2009 Art. 6 Official Journal of 23 January 2009*

Art. L. 621-18-4. – **I.** Any issuer whose financial instruments are admitted to trading on a regulated market or are the subject of an application for admission to trading on such a market shall compile, update and keep available to the Autorité des Marchés Financiers, as provided for in its General Regulation, a list of the individuals working for it who have access to privileged information relating directly or indirectly to said issuer, and of third parties acting for it or on its behalf, who have access to said information in connection with their business dealings with said issuer.

In the same way, said third parties shall compile, update and keep available to the Autorité des Marchés Financiers a list of the individuals working for them who have access to privileged information relating directly or indirectly to said issuer, and of third parties acting for them or on their behalf, who have access to the same information in connection with their business dealings with said issuer.

**II. – The General Regulation of the Autorité des Marchés Financiers may also determine the terms applicable to the obligations to compile, update and keep available lists of individuals having access to privileged information relating to assets referred to in paragraph II of Article L. 421-1. It also specifies the individuals responsible for so doing.**

*Inserted by Act No. 2005-811 of 20 July 2005 Art.3 Official Journal of 21 July 2005*

*Amended by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*Amended by Act No. 2010-1249 of 22 October 2010 9 Official Journal of 23 October 2010*

Art. L. 621-19. – The Autorité des Marchés Financiers is authorised to deal with claims from any interested party relating to matters within its competence and to resolve them appropriately. **Where the conditions so permit, it proposes a friendly settlement of the disputes submitted to it, via arbitration or mediation.**

A referral to the Autorité des Marchés Financiers seeking extrajudicial settlement of a dispute shall suspend limitation of any civil or administrative action. Said limitation shall resume when the Autorité des Marchés Financiers announces the close of the mediation procedure.

The Autorité des Marchés Financiers cooperates with its foreign counterparts to facilitate extrajudicial settlement of cross-border disputes.

It may formulate proposals for amendments to the laws and regulations concerning the information provided to the holders of financial instruments and to the public, the markets in financial instruments **and in assets referred to in paragraph II of Article 421-1** and the status of the investment service providers. **Said report presents, in particular, the changes to the regulatory framework of the European Union applicable to the financial markets and reviews the cooperation with the regulatory authorities of the European Union and of the other Member States.**

Each year, it draws up a report to the President of the Republic and to Parliament which is published in the Official Journal of the French Republic.

The Chairman of the Autorité de Contrôle Prudentiel shall be heard by the Finance Commissions of the two Assemblies if they so request and may ask to be heard by them.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 17, Art. 46 V 1 Official Journal of 2 August 2003*

*Amended by LSF 2003-706 Art. 46, V, 1, 2 or 3*

*Amended by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 3 and 9 Official Journal of 23 October 2010*

Art. L. 621-20. - For the purposes of the provisions falling within the scope of the competence of the Autorité des Marchés Financiers, the civil, criminal or administrative courts may call upon its Chairman or his representative to file conclusions and develop them verbally before them without prejudice to the provisions of Article L. 466-1.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 18 I Official Journal of 2 August 2003*

Art. L. 621-20-1. - If, in the performance of its duties, the Autorité des Marchés Financiers has knowledge of a crime or an offence, it must inform the Public Prosecutor thereof without delay and send him all relevant information, statements of offence and other documents.

Without prejudice to the provisions of the third paragraph of Article L. 632-16, the Public Prosecutor may obtain from the Autorité des Marchés Financiers all the information it holds in connection with the performance of its duties. Information may not be withheld from him on grounds of professional secrecy.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 18 II Official Journal of 2 August 2003*

*Amended by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

## Subsection 8

### Cooperation with the Commission de Régulation de l'Énergie (Energy Regulation Commission)

**Art. L. 621-21. - I. - The Autorité des Marchés Financiers and the Commission de Régulation de l'Énergie cooperate with each other. They send each other the information that is conducive to the performance of their respective duties.**

The Autorité des Marchés Financiers may seek the opinion of the Commission de Régulation de l'Énergie on any matter within the scope of its competence.

**II. - Where a matter is referred to it by the Commission de Régulation de l'Énergie pursuant to Article 39-1 of Act No. 2000-108 of 10 February 2000 relating to the modernisation and development of the public electricity service, the Autorité des Marchés Financiers shall keep the Commission de Régulation de l'Énergie informed of the investigation's progress. The Commission de Régulation de l'Énergie may ask the Autorité des Marchés Financiers to forward to it all the information relating to the case which may be relevant to the performance of its duties.**

**III. - As an exception to the provisions of Article L. 631-1, the Autorité des Marchés Financiers may send the Commission de Régulation de l'Énergie information that is covered by professional secrecy.**

**The information gathered pursuant to paragraphs I and II is covered by the professional secrecy in force under the conditions applicable to the institution which provided it and the recipient institution.**

**Said information may be used by the authorities referred to in paragraphs I and II only in the performance of their duties, unless the authority which provided said information agrees otherwise.**

*Repealed by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*Reinserted by Act No. 2010-1249 of 22 October 2010 Art. 9 Official Journal of 23 October 2010*

## Section 5 Relations with statutory auditors

*(LSF 2003-706 Art. 113)*

Art. L. 621-22. - I. - The Autorité des Marchés Financiers shall be informed of the proposals for the appointment or the reappointment of the statutory auditors of entities whose financial securities are admitted to trading on a regulated market and may make any observation it deems necessary concerning said proposals. Said observations shall be made known to the General Meeting or the body responsible for making the appointment, and to the professional concerned.

II. - It may ask the statutory auditors of entities whose financial securities are admitted to trading on a regulated market for any information on the entities or individuals that/who control them.

The statutory auditors of the entities referred to in the previous paragraph shall inform the AMF of any fact or decision which justifies an intention on their part to refuse to certify the accounts.

III. - The statutory auditors of entities whose financial securities are admitted to trading on a regulated market may raise questions with the Autorité des Marchés Financiers concerning any matter encountered in the performance of their duties which is likely to have an effect on the entity's financial information.

IV. - The statutory auditors of companies whose financial securities are admitted to trading on a regulated market shall send the Autorité des Marchés Financiers a copy of the document sent to the Chairman of the Board of Directors or of the Executive Board pursuant to the second paragraph of Article L. 234-1 of the Commercial Code. They shall also send said authority the conclusions of the report which they intend to present to the General Meeting pursuant to Articles L. 823-12 and L.822-15 of said code.

V.- Statutory auditors are released from professional secrecy, and shall therefore not incur liability, in respect of information provided pursuant to the obligations and formalities stipulated in this article and in Article L. 621-18.

The provisions of this article shall apply to the statutory auditors of entities whose financial securities are offered to the public on a multilateral trading facility which abides by the laws or regulations intended to protect investors from insider dealing, price rigging and the dissemination of false information.

VII. - The provisions referred to in paragraphs III and V of this article shall apply to statutory auditors who carry out assignments in connection with public offers. The Autorité des Marchés Financiers may ask the statutory auditors for any information on the entities they control, where said entities make an offer to the public.



*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 113 1, 2 and Art. 116 Official Journal of 2 August 2003*

*Amended by Act No. 2005-842 of 26 July 2005 Art. 32 Official Journal of 27 July 2005*

*Amended by Order No. 2005-1126 of 8 September 2005 Art. 22 Official Journal of 9 September 2005*

*Amended by Order No. 2009-80 of 22 January 2009 Art. 6 Official Journal of 23 January 2009*

Art. L. 621-23. – The statutory auditors of portfolio management companies are released from professional secrecy in regard to the Autorité des Marchés Financiers.

The statutory auditors are required to inform the Autorité des Marchés Financiers as soon as possible of any fact or decision concerning a portfolio management company which they have become aware of in the performance of their duties and which could:

1. Constitute a violation of the laws or regulations applicable to said company and be likely to have a significant impact on its financial situation, profits or assets;

2. Jeopardise its continued exploitation;

3. Give rise to the issuing of reservations or a refusal to certify the accounts.

The same obligation shall apply to facts and decisions which they may become aware of in the performance of their duties relative to a parent company or subsidiary of a company referred to above.

The statutory auditors shall not incur liability for information given or facts disclosed in the performance of their duties or under the obligations imposed by this article.

The Autorité des Marchés Financiers may also send the statutory auditors of portfolio management companies the information they require to accomplish their mission. The information thus transmitted is covered by the professional secrecy rule.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 46 V 1, Art. 113 1 Official Journal of 2 August 2003*

Art. L. 621-24. – The same obligation shall apply to facts and decisions which they may become aware of in the performance of their duties relative to a parent company or subsidiary of a company referred to above.

Statutory auditors shall not incur liability for information given or facts disclosed in the performance of their duties or under the obligations imposed by this article.

The Autorité des Marchés Financiers may also send the statutory auditors of portfolio management companies the information they require to accomplish their mission. The information thus provided is covered by the professional secrecy rule.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 46, V, 1, 2 or 3 and Art. 113 3 Official Journal of 2 August 2003*

Art. L. 621-25. – The Autorité des Marchés Financiers may ask the statutory auditors of an investment service provider, of a market undertaking or of an intermediary authorised to provide custody or administration of financial instruments for any information concerning the application by said service provider, market undertaking or intermediary of the provisions of Book IV or Part III of Book V of this Code or of the General Regulation of the Autorité des Marchés Financiers relating to the conduct of business rules or the conditions applicable to the custody or administration of financial instruments.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 46, V, 1, 2 or 3 and Art. 113 3 Official Journal of 2 August 2003*

*Amended by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*(Art. L. 621-26 to Art. L. 621-29. Repealed by LSF 2003-706 Art. 48)*

## Section 6 Means of appeal

*(Numbering of section changed by LSF 2003-706 Art. 48)*

Art. L. 621-30. – Consideration of the appeals made against the individual decisions of the Autorité des Marchés Financiers other than those relating to the institutions, individuals and entities referred to in paragraph II of Article L. 621-9, including the sanctions imposed on them, shall come within the jurisdiction of the ordinary courts. Such appeals shall not have suspensive effect unless the court decides otherwise. In which case, the court hearing the appeal may order that enforcement of the contested decision be suspended if it is likely to give rise to manifestly excessive consequences.

**The decisions handed down by the Enforcement Commission may be appealed against by the individuals and legal entities sanctioned and by the Chairman of the Autorité des Marchés Financiers, with the agreement of the Board. Where an appeal is brought by an individual or legal entity sanctioned, the AMF's Chairman may lodge an appeal in the same way.**

The implementing provisions of this article are determined in a decree issued following consultation with the Conseil d'Etat.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 20, Art. 48 II 5 Official Journal of 2 August 2003*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 6 Official Journal of 23 October 2010*

## Section 7 Investment recommendations made or disseminated in the context of journalism

*Section Inserted by Act No. 2005-842 of 26 July 2005 Art. 29 Official Journal of 27 July 2005*

Art. L. 621-31. – The following are not subject to the rules laid down in the first paragraph of IX of Article L. 621-7 or to the penalties imposed by Article L. 621-17-1:

1. The following companies, in relation to their journalistic activities, where they belong to an association constituted as provided for in Article L. 621-32:

- publishers of press publications within the meaning of Act No. 86-897 of 1 August 1986 reforming the law applicable to the press;

- broadcasters of radio or television services within the meaning of Act No. 86-1067 of 30 September 1986 relating to freedom of communication;

- publishers of on-line public communications services within the meaning of Act No. 2004-575 of 21 June 2004 for confidence in the digital economy;

- press agencies within the meaning of Order No. 45-2646 of 2 November 1945 setting out provisional regulations for the press agencies;

2 Journalists, within the meaning of Articles L. 7111-3, L. 7111-4 and L. 7112-1 of the Labour Code, where they practice their profession in one or more of the undertakings referred to in paragraph 1.

*Inserted by Act No. 2005-842 of 26 July 2005 Art. 29 Official Journal of 27 July 2005*

Art. L. 621-32. – The association referred to in paragraph 1 of Article L. 621-31 shall be formed by the entities enumerated therein, pursuant to the Act of 1 July 1901 relating to partnership agreements. Only the entities in the categories enumerated in said paragraph 1 may join them.

Said association shall draw up conduct of business rules. Said rules shall lay down specific criteria intended to guarantee compliance by the association's members who make or disseminate investment recommendations intended for the public which relate to financial instruments admitted to trading on a regulated market, or to their issuer, with the obligations pertaining to fair presentation and disclosure of conflicts of interest pursuant to Commission Directive 2003/125/EC of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the fair presentation of investment recommendations and the disclosure of conflicts of interest.

The responsible editor or, failing that, the legal representative of the member company, shall ensure that the criteria laid down in the conduct of business rules are properly applied by the journalists working under his authority.

*Inserted by Act No. 2005-842 of 26 July 2005 Art. 29 Official Journal of 27 July 2005*

Art. L. 621-33. – The association referred to in Article L. 621-32 shall either automatically deal with facts likely to constitute a breach, by a member, of the conduct of business rules criteria referred to in that same article, or they shall be referred to it by the Autorité des Marchés Financiers.

As an exception to Articles 42 et seq of Act No. 86-1067 of 30 September 1986 relating to freedom of communication, where it has knowledge of a fact likely to constitute a breach by a company that broadcasts radio or television services, the Conseil Supérieur de l'Audiovisuel (Audiovisual High Council) shall immediately inform the Autorité des Marchés Financiers with the object of launching an investigation.

Where it deals with any fact indicated in the first paragraph which it has chosen to examine or which has been referred to it, the association shall invite the member companies concerned and their responsible editor or, failing that, their legal representative, to submit their observations. It may, upon completion of said adversary procedure, impose a penalty on said entities for any breach of the criteria laid down in the conduct of business rules.

*Inserted by Act No. 2005-842 of 26 July 2005 Art. 29 Official Journal of 27 July 2005*

Art. L. 621-34. – The association may impose one of the following disciplinary sanctions on the member companies or their responsible editor, or, failing that, on their legal representative, commensurate with the seriousness of the breach:

1. A warning;
2. A reprimand;

3 The compulsory insertion of a notice or a communiqué in the medium concerned;

4 The broadcasting of a communiqué.

The association may also temporarily or permanently exclude one of its members. This measure may be ordered only in cases in which the member concerned fails to implement a sanction pronounced against it or if it has been repeatedly sanctioned for breaches of the criteria stipulated in the conduct of business rules.

No sanction may be pronounced unless the entity suspected of committing a breach, or its representative, has been heard or, failing that, duly summoned.

The association shall rule within three months of opening the case. It shall inform the Autorité des Marchés Financiers of its decision within one month of pronouncing it. If no decision is pronounced within said three-month period, the association shall be deemed to have decided that there were no grounds for a sanction.

The association may publish its decision in the publications, journals or other media that it designates. The cost thereof shall be borne by the member sanctioned.

The formalities for implementing and administering the disciplinary proceedings referred to in the preceding paragraphs are set out in the association's articles of association.

*Inserted by Act No. 2005-842 of 26 July 2005 Art. 29 Official Journal of 27 July 2005*

Art. L. 621-35. – The association shall draw up a report each year that presents an assessment of its activities. It shall send said report to the Autorité des Marchés Financiers, which shall make its observations and recommendations on the association's activities in its annual report.

*Inserted by Act No. 2005-842 of 26 July 2005 Art. 29 Official Journal of 27 July 2005*

*(Chapter II Conseil des Marchés Financiers (Financial Markets Council) Repealed by LSF 2003-706 Art. 48)*

*(Art. L. 622-1 to L. 622-10, L.622-13 to L. 622-20-1 and L.622-25 Repealed by LSF 2003-706 Art. 48)*

*(Articles L. 622-11 and L. 622-12 become Articles L. 621-24 and L. 621-25 LSF 2003-706 Art. 113 V 3)*

*(Chapter III Conseil de Discipline de la Gestion Financière (Financial Management Disciplinary Council) Repealed by LSF 2003-706 Art. 48)*

*(Art. L. 623-1 to L. 623-4 and L.642-4 to L. 642-7 Repealed by LSF 2003-706 Art. 48)*

# PART III COOPERATION, EXCHANGE OF INFORMATION AND ADDITIONAL SUPERVISION OF THE FINANCIAL CONGLOMERATES

*Heading amended by Order No. 2004-1201 of 12 November 2004  
Art. 12 Official Journal of 16 November 2004 and by Order No. 2007-  
544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

## Chapter I Cooperation and exchange of information on French soil

*Heading amended by Order No. 2007-544 of 12 April 2007 Art. 5  
Official Journal of 13 April 2007*

### Section 1 Cooperation and exchanges of information between authorities

*Heading amended by Order No. 2007-544 of 12 April 2007 Art. 5  
Official Journal of 13 April 2007*

Art. L. 631-1. – I. – The Banque de France, the Autorité de Contrôle Prudentiel and the Autorité des Marchés Financiers cooperate among themselves. They send each other information which is relevant to the performance of their respective duties.

The Autorité de Contrôle Prudentiel, the Autorité des Marchés Financiers and the High Council of the Order of Statutory Auditors may also send each other information which is relevant to the performance of their respective duties.

II.- The authorities referred to in paragraph I, the deposit guarantee fund instituted by Article L. 312-4, the guarantee fund instituted by Article L. 423-1 of the Insurance Code, the compulsory indemnity insurance guarantee fund instituted by Article L. 421-1 of that same code, the joint guarantee fund instituted by Article L. 931-35 of the Social Security Code, the guarantee fund instituted by Article L. 431-1 of the Mutual Insurance Code, market undertakings and clearing houses are authorised to send each other information which is relevant to the performance of their respective duties.

III.- The information gathered pursuant to paragraphs I and II is covered by the professional secrecy in force under the conditions applicable to the institution which provided it and the recipient institution.

Said information may be used, by the authorities referred to in paragraph I, only in the performance of their duties and, by the other entities referred to in paragraph II, only for the purposes for which it was communicated to them, unless the institution which provided it agrees otherwise.

The authorities referred to in paragraph I may exchange information covered by professional secrecy only with the consent of the authority or entity which provided said information.

*Amended by Act No. 2001-420 of 15 May 2001 Art. 6 Official  
Journal of 16 May 2001*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 III 32 and  
46 VII Official Journal of 2 August 2003*

*Amended by le decree No. 2005-1564 of 15 December 2005  
Art. 14 Official Journal of 16 December 2005*

*Replaced by Order No. 2007-544 of 12 April 2007 Art. 5 Official  
Journal of 13 April 2007*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official  
Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 12  
Official Journal of 23 October 2010*

### Section 2 The Conseil de Régulation Financière et du Risque Systémique

*Heading amended by Order No. 2010-1249 of 22 October 2010  
Art. 1 Official Journal of 23 October 2010*

Art. L. 631-2. – The Conseil de Régulation Financière et du Risque Systémique (Financial Regulation and Systemic Risk Council) is composed of eight members:

1 The Minister for the Economy, as Chairman;

2 The Governor of the Banque de France, as Chairman of the Autorité de Contrôle Prudentiel, assisted by the Vice-Chairman of said authority;

3 The Chairman of the Autorité des Marchés Financiers;

4 The Chairman of the Autorité des Normes Comptables;

5 Three prominent individuals, chosen on account of their competence in monetary, financial or economic domains, appointed by the Minister for the Economy for a term of five years.

The members referred to in paragraphs 1 to 4 may arrange to be represented.

The Conseil shall meet at least twice each year when convened by its Chairman, and whenever necessary.

*Amended by Act No. 2001-420 of 15 May 2001 Art. 6 Official  
Journal of 16 May 2001*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 III 32 and  
46 VII Official Journal of 2 August 2003*

*Amended by le decree No. 2005-1564 of 15 December 2005  
Art. 14 Official Journal of 16 December 2005*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official  
Journal of 22 January 2010*

*Replaced by Act No. 2010-1249 of 22 October 2010 Art. 1  
Official Journal of 23 October 2010*

Art. L. 631-2-1. – Without prejudice to the respective competences of the institutions that its members represent, the Conseil de Régulation Financière et du Risque Systémique performs the following duties:

1 It ensures cooperation and exchange of information between the institutions that its members represent;

2 It examines the analyses of the situation of the sector and of the financial markets and evaluates the systemic risks they present, taking into consideration the opinions and recommendations of the European Systemic Risk Board;

3 It facilitates cooperation and the synthesis the work in progress to formulate the international and European standards applicable to the financial sector and may state any opinion or point of view that it deems necessary.

*Inserted by Act No. 2010-1249 of 22 October 2010 Art. 1 Official  
Journal of 23 October 2010*

**Art. L. 631-2-2. – In performing the duties described in Article L. 631-2-1, the Conseil de Régulation Financière et du Risque Systémique may hear representatives of the credit institutions, the investment firms, the insurance companies, the mutual societies and the provident institutions.**

**The Conseil de Régulation Financière et du Risque Systémique shall draw up a public annual report for submission to Parliament.**

*Inserted by Act No. 2010-1249 of 22 October 2010 Art. 1 Official Journal of 23 October 2010*

## Section 2 Board of Supervisory Authorities of Financial Sector Institutions

**Art. L. 631-2-3. – A Board of Supervisory Authorities of Financial Sector Institutions is established. Said Board is composed of the Governor of the Banque de France, the Chairman of the Autorité de Contrôle Prudentiel and the Chairman of the Autorité des Marchés Financiers or their representatives. It is chaired by the Minister for the Economy or his representative.**

The function of the Board of Supervisory Authorities is to facilitate information exchanges between the supervisory authorities of the financial groups which are at the same time engaged in lending, investment and insurance activities, and to raise any question of common interest relating to the coordination of the control of said groups.

The Board shall meet at least three times each year. It may also be consulted for advice by the Minister for the Economy, the Governor of the Banque de France, the Chairman of the Autorité de Contrôle Prudentiel and the Chairman of the Autorité des Marchés Financiers on any matter within the scope of its competence.

*Amended by Act No. 2001-420 of 15 May 2001 Art. 6 Official Journal of 16 May 2001*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 III 32 and 46 VII Official Journal of 2 August 2003*

*Amended by le decree No. 2005-1564 of 15 December 2005 Art. 14 Official Journal of 16 December 2005*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

## Chapter II Cooperation and exchange of information with other countries

*Heading amended by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

### Section 1 Provisions concerning supervision, inspections and investigations

*Section inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007 and Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

Subsection 1 Cooperation and exchanges of information with the authorities of the other Member States of the European Community or of other States party to the European Economic Area Agreement

*Subsection inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

**Art. L. 632-1. – As an exception to the provisions of Act No. 68-678 of 26 July 1968 relating to the communication of documents and information of an economic, commercial, industrial, financial or technical nature to foreign individuals or foreign legal entities, the Autorité de Contrôle Prudentiel and the Autorité des Marchés Financiers cooperate with the authorities of the other Member States of the European Union or of the other States party to the European Economic Area Agreement performing equivalent functions, as provided for in this chapter. Inter alia, they exchange with said authorities the information needed to perform their respective duties. Where an urgent situation likely to threaten the stability of the financial system of another Member State of the European Union or of another State party to the European Economic Agreement warrants it, they are also allowed to exchange any necessary information with the ministries of those States having responsibility for the financial sector, pursuant to the rules laid down by this article, Article L. 631-1 and Articles L. 632-2 to L. 632-4.**

The cooperation provided for in the first paragraph may not be refused on the grounds that the acts to which the inspection or the investigation relates do not contravene a legal or regulatory provision in force in France.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 19 Official Journal of 23 October 2010*

**Art. L. 632-2. – As an exception to the provisions of Act No. 68-678 of 26 July 1968 relating to the communication of documents and information of an economic, commercial, industrial, financial or technical nature to foreign individuals or foreign legal entities, the foreign counterparts of another Member State of the European Community or of another State party to the European Economic Area Agreement may require the cooperation of the Autorité de Contrôle Prudentiel or the Autorité des Marchés Financiers in connection with a monitoring action, an on-the-spot inspection or an investigation.**

In the same context, where the Autorité de Contrôle Prudentiel or the Autorité des Marchés Financiers receives a request concerning an on-the-spot inspection or an investigation, it shall respond by carrying it out itself, by allowing the requesting authority to carry it out directly, or by allowing statutory auditors or experts to carry it out.

Where it does not carry out the on-the-spot inspection or the investigation itself, the authority which made the request may be in attendance, if it so wishes.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

**Art. L. 632-3. – The Autorité de Contrôle Prudentiel and the Autorité des Marchés Financiers may use the information**



covered by professional secrecy which they receive solely in the performance of their duties.

A decree issued following consultation with the Conseil d'Etat determines the implementing provisions of this article.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007 and amended by the corrective order of 19 May 2007*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

Art. L. 632-4. – Notwithstanding the provisions of this chapter, the Autorité de Contrôle Prudentiel and the Autorité des Marchés Financiers may transmit to the European System of Central Banks or to the European Central Bank, acting in their capacity as monetary authorities, information covered by professional secrecy intended for the performance of their duties.

Notwithstanding the provisions of this chapter, the Banque de France, the Autorité de Contrôle Prudentiel and the Autorité des Marchés Financiers may transmit information covered by professional secrecy intended for the performance of their duties to other public authorities responsible for the supervision of payment systems and systems for the settlement and delivery of financial instruments.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 22 Official Journal of 23 October 2010*

Art. L. 632-5. – Where the Autorité de Contrôle Prudentiel or the Autorité des Marchés Financiers is invited to cooperate in an investigation, an on-the-spot inspection or a monitoring action pursuant to Article L.632-2, or in an exchange of information pursuant to Article L.632-1, it may refuse to comply with such a request only where the nature thereof is likely to undermine French sovereignty, security or public order, or if criminal proceedings have already been instituted in France on the basis of the same facts and against the same entities, or if said entities have already been sanctioned for the same facts by a final decision.

In the event of refusal, it shall inform the competent authority thereof.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Art. L. 632-6. - I.- Where the Autorité de Contrôle Prudentiel or the Autorité des Marchés Financiers has reasonable grounds for suspecting that acts which violate the provisions applicable to investment service providers, regulated markets or market undertakings have been committed in another Member State of the European Community or another State party to the European Economic Area Agreement by entities which are not subject to its supervision, it shall inform the competent authority of said other State thereof in the most detailed manner possible.

II.- Where the Autorité de Contrôle Prudentiel or the Autorité des Marchés Financiers is informed by an authority of another Member State of the European Community or of another State party to the European Economic Area Agreement that acts which violate the provisions applicable to investment service providers, regulated markets or market undertakings are likely to have been committed in Metropolitan France, the

overseas *départements*, Saint-Barthélemy or Saint Martin by an entity which is not subject to that authority's supervision, it shall take the appropriate measures. It shall communicate the results thereof to the competent authority which informed it and, to the fullest extent possible, shall inform it of any important events that occurred in the intervening period.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*Amended by Order No. 2008-698 of 11 July 2008 Art. 1 Official Journal of 16 July 2008*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

## Subsection 2 Cooperation and exchanges of information with the authorities of States which are not members of the European Community and not party to the European Economic Area Agreement

*Subsection inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

Art. L. 632-7. - I. - As an exception to the provisions of Act No. 68-678 of 26 July 1968 relating to the communication of documents and information of an economic, commercial, industrial, financial or technical nature to foreign individuals or foreign legal entities, the Autorité de Contrôle Prudentiel and the Autorité des Marchés Financiers may enter into cooperation agreements with the equivalent authorities of a country which is not a Member State of the European Community and not party to the European Economic Area Agreement which make provision, *inter alia*, for the exchange of information. As an exception to those same provisions, the Banque de France may enter into cooperation agreements with public authorities responsible for the supervision of payment systems and systems for the settlement and delivery of financial instruments which make provision, *inter alia*, for the exchange of information. The information communicated must be afforded guarantees of professional secrecy at least equal to those that the French authorities which are party to said agreements are subject to. Said exchange of information must be intended for the performance of said competent authorities' duties.

II.-The Autorité de Contrôle Prudentiel and the Autorité des Marchés Financiers may also enter into cooperation agreements that make provision, *inter alia*, for the exchange of information with authorities or nationals of a country which is not a Member State of the European Community and not party to the European Economic Area Agreement, which/who are:

a) Responsible for the supervision of credit institutions, payment institutions, other financial institutions and insurance companies and the financial markets;

b) Tasked with the management of court-ordered insolvency procedures relating to investment firms and any other similar procedure;

c) Tasked with conducting the statutory audit of the accounts of investment firms, other financial institutions, credit institutions, payment institutions and insurance companies within the purview of their supervisory functions, or their functions as managers of compensation schemes;

d) Responsible for the supervision of entities participating in the collective procedures of investment firms or in any other similar procedure;

e) Responsible for supervising the individuals and entities tasked with carrying out the statutory audit of the accounts of insurance companies, credit institutions, investment firms and other financial institutions, where the information

communicated is covered by guarantees of professional secrecy at least equal to those that the French authorities party to said agreements are subject to. Said exchange of information must be intended for the performance of said authorities' or entities' duties.

III.- Where it originates from an authority of another Member State of the European Community or another State party to the European Economic Area Agreement or a third-party country, the information may not be disclosed without the express consent of the authority which provided it and, where this is the case, only for the purposes for which its consent was given.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 15 Official Journal of 16 July 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 22 Official Journal of 23 October 2010*

### Subsection 3 Provisions specific to the Autorité des Marchés Financiers

*Subsection inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

Art. L. 632-8. – The Autorité des Marchés Financiers is the sole authority which may act as a point of contact for requests for exchanges of information or cooperation with the authorities of the other Member States of the European Union or of the other States party to the European Economic Area Agreement.

The Autorité des Marchés Financiers shall immediately communicate the information they require to perform their duties to the competent authorities of the other Member States of the European Union or of the other States party to the European Economic Area Agreement which have been designated as points of contact for the purposes of Paragraph 1 of Article 56 of Directive 2004/39/EC of 21 April 2004 on markets in financial instruments.

If the competent authority which has provided the information so requested at the time of communication, the Autorité des Marchés Financiers may disclose it only with said authority's express consent and only for the purposes for which its consent was given.

The Autorité des Marchés Financiers shall immediately forward the information received under this article, paragraph II of Article L. 612-44 and Articles L. 621-23 and L.632-7 to the Autorité de Contrôle Prudentiel. It shall forward it to other institutions or entities only with the express consent of the competent authorities which disclosed it and only for the purposes for which those authorities have given their consent, unless an urgent matter justifies so doing. In this latter case, the Autorité des Marchés Financiers shall immediately inform its counterpart authority which sent the information.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 12 Official Journal of 23 October 2010*

Art. L. 632-9. – Where the activities of a regulated market referred to in Article L.421-1 which has installed access devices in another Member State of the European Community or in another State party to the European Economic Area Agreement have acquired substantial importance there for the operation of the financial markets and investor protection, the Autorité des Marchés Financiers shall introduce appropriate cooperation arrangements with the competent authority of said State.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

The Autorité des Marchés Financiers may request information directly from investment service providers who are members of a regulated market referred to in Article L.421-1 and are not established in France. In such cases, it shall inform the competent authority of the Member State of the European Community or of the other State party to the European Economic Area Agreement which is their home State.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

Art. L. 632-11. – Where the Autorité des Marchés Financiers receives reports on transactions pursuant to Article L.533-9, it shall transmit such information to the competent authority of the market which is the most relevant in terms of liquidity for the financial instrument in question, where said market is located in another Member State of the European Community or in another State party to the European Economic Area Agreement.

Where the Autorité des Marchés Financiers receives reports on the transactions of a branch in Metropolitan France, in the overseas *départements* or in Saint-Barthélemy or Saint Martin of investment service providers having their registered office in another Member State of the European Community or in another State party to the European Economic Area Agreement, it shall forward them to the competent authority of the branch's home State. It shall be exempted from such transmission, however, if the latter authority indicates that it does not wish to receive them.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*Amended by Order No. 2008-698 of 11 July 2008 Art. 1 Official Journal of 16 July 2008*

## Section 2 Other provisions

*Section inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

### Subsection 1 Provisions specific to the Autorité de Contrôle Prudentiel relative to credit institutions, payment institutions and investment firms

*Subsection inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

Art. L. 632-12. – The on-the-spot inspections of the Autorité de Contrôle Prudentiel may be extended to the legal entities referred to in Article L. 612-26 located in another Member State of the European Community or in another State

party to the European Economic Area Agreement. The Commission requests the competent authorities of the other Member State of the European Community or of the other State party to the European Economic Area Agreement to carry out such inspections. With the permission of said authorities, it may designate representatives to carry out the inspections. Where it does not perform the inspection itself, the Autorité de Contrôle Prudentiel may participate therein, if it so wishes.

In order to effectively supervise an institution subject to its supervision, the Autorité de Contrôle Prudentiel may require staff, outsourced service providers or branches established in another Member State of the European Community or in another State party to the European Economic Area Agreement to send it all information relevant to the exercise of said supervision and, having duly informed the authority of that State which has competence for supervising credit institutions, payment institutions or investment firms, to have its representatives carry out an on-the-spot inspection of said institution's staff, outsourced service providers or branches.

Where the authorities of a Member State of the European Community or of another State party to the European Economic Area Agreement which have competence for supervising a credit institution, a payment institution or an investment firm wish, in specific cases, to verify information relating to one of the legal entities referred to in Article L. 612-26 located in France, the Autorité de Contrôle Prudentiel must comply with their request either by carrying out such verification itself or by allowing representatives of those authorities to carry it out. Where they do not carry out the verification themselves, the competent authorities which submitted the request may, if they so wish, participate therein.

As an exception to the provisions of Act No. 68-678 of 26 July 1968 relating to the communication of documents and information of an economic, commercial, industrial, financial, or technical nature to foreign individuals or foreign legal entities, the Autorité de Contrôle Prudentiel may, moreover, exchange any information pertinent to the execution of their inspections with the authorities of the other Member States of the European Union or of the other States party to the European Economic Area Agreement which are responsible for the supervision of the credit institutions, payment institutions, investment firms, other financial institutions and insurance companies.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 15 Official Journal of 16 July 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

Art. L. 632-13. – As an exception to the provisions of Act No. 68-678 of 26 July 1968 relating to the communication of documents and information of an economic, commercial, industrial, financial, or technical nature to foreign individuals or foreign legal entities, the Autorité de Contrôle Prudentiel may enter into bilateral agreements with the authorities of a State which is not a Member State of the European Community and not party to the European Economic Area Agreement which perform a role similar to that entrusted to the Autorité de Contrôle Prudentiel in France, provided that said authorities are themselves subject to professional secrecy, having as their object, concurrently or otherwise:

1. The extension of on-the-spot inspections to the foreign branches or subsidiaries of a credit institution, investment firm or a financial holding company governed by French law;

2. The carrying out by the Autorité de Contrôle Prudentiel, at the request of said foreign authorities, of on-the-spot

inspections in institutions subject to its supervision in France which are branches or subsidiaries of institutions subject to the supervision of said authorities. Said inspections may be carried out jointly with said foreign authorities;

3. The determination of the circumstances in which the Autorité de Contrôle Prudentiel may send, receive or exchange information relevant to the exercise of its powers and to those of the foreign authorities responsible for supervising credit institutions, investment firms, other financial institutions, insurance companies or financial markets.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

Art. L. 632-14. Inspections carried out by the Autorité de Contrôle Prudentiel within the scope of Articles L. 632-12 and L. 613-13 by representatives of a foreign authority with competence for supervising credit institutions must relate exclusively to compliance with the prudential management standards of the State concerned in order to enable the financial situation of banking or financial groups to be monitored. They must be the subject of a report to the Autorité de Contrôle Prudentiel, which is the only authority empowered to impose sanctions on the subsidiary or branch inspected in France.

To enable the inspections referred to in Articles L. 632-12 and L. 632-13 to be carried out, individuals who participate in the administration or the management of the credit institutions referred to in the previous paragraph, or who are employed by them, must comply with the requests of the representatives of the foreign banking supervisory authorities and cannot refuse to do so on grounds of professional secrecy.

The provisions of Article L. 632-5 shall apply to the activities covered by this Article.

Without prejudice to the remit of the Autorité des Marchés Financiers, the provisions of this article and of Articles L. 632-12 and L. 632-13 shall apply to investment firms and the investment departments of credit institutions.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

Art. L. 632-15. – As an exception to the provisions of Act No. 68-678 of 26 July 1968 relating to the communication of documents and information of an economic, commercial, industrial, financial or technical nature to foreign individuals or foreign legal entities, the Autorité de Contrôle Prudentiel may, beyond the scope of the agreements referred to in Articles L. 632-7 and L. 632-13, send information to the authorities of States which are not Member States of the European Union and not party to the European Economic Area Agreement which are responsible for the supervision of the entities referred to in subparagraphs 1 to 3 of paragraph I A of Article L. 612-2 and paragraphs 1 to 4 of Article L. 612-26 of this code, subject to reciprocity and provided that the information communicated is afforded guarantees of professional secrecy at least equal to those which the French authorities are subject to.

The provisions of paragraph III of Article L. 632-7 shall apply to the activities governed by this article and by Articles L. 632-12 and L. 632-13.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*Amended by Order No. 2007-1490 of 18 October 2007 Art. 5 Official Journal of 19 October 2007*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 12 Official Journal of 23 October 2010*

## Subsection 2 Provisions specific to the Autorité des Marchés Financiers

*Subsection inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

Art. L. 632-16. – The Autorité des Marchés Financiers may carry out monitoring, inspection and investigatory activities at the request of foreign authorities having similar powers. Where such activities are carried out on behalf of authorities of a country which is not a Member State of the European Community and not party to the European Economic Area Agreement, they shall be carried out subject to reciprocity.

As an exception to the provisions of Act No. 68-678 of 26 July 1968 relating to the communication of documents and information of a financial or technical nature to foreign individuals or foreign legal entities, the obligation of professional secrecy stipulated in paragraph II of Article L. 621-4 shall not hinder communication by the Autorité des Marchés Financiers of the information it holds, or which it gathers at their request, to foreign authorities which exercise similar powers and are bound by the same obligations of professional secrecy. Where said communication is made to authorities of a State which is not a Member State of the European Community and not party to the European Economic Area Agreement, it shall take place subject to reciprocity. In the performance of its duties, the Autorité des Marchés Financiers may also exchange confidential information relating to the obligations referred to in Articles L. 412-1, L.451-1-2 and L. 451-1-3 with entities to which said authorities have delegated the discharge of their obligations, provided that such entities are bound by the same obligations of professional secrecy. To this end, the Autorité des Marchés Financiers may enter into agreements which organise its relations with said delegated entities.

The provisions of Article L. 632-5 and of paragraph III of Article L. 632-7 shall apply to the activities governed by this article.

In addition to the agreements referred to in Article L. 632-7, for implementation of the preceding paragraphs the Autorité des Marchés Financiers may enter into agreements which organise its relations with foreign authorities exercising powers similar to its own.

The agreements referred to in Article L. 632-7 and in the preceding paragraph shall be approved by the Autorité des Marchés Financiers as provided for in Article L. 621-3.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

## Subsection 3 Miscellaneous provisions

*Subsection inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

Art. L. 632-17. – **The market infrastructures that disseminate or keep available to the Autorité des Marchés Financiers or to the Autorité de Contrôle Prudentiel information relating to transactions in financial instruments may communicate to their foreign counterparts and to the authorities which are the counterparts of the Autorité des Marchés Financiers or of the Autorité de Contrôle Prudentiel the information they**

**require to perform their duties, including information covered by professional secrecy, provided that said counterpart institutions are themselves subject to professional secrecy within a legislative framework that provides guarantees equivalent to those applicable in France and subject to reciprocity.**

**Where said exchanges of information take place between the market infrastructures and the counterpart authorities of the Autorité des Marchés Financiers or of the Autorité de Contrôle Prudentiel, they shall be carried out as provided for in a cooperation agreement referred to in Article L. 632-7.**

**Within the framework of the supervision of the risks incurred by the members, said information may, inter alia, include the positions taken on the market, the margin deposits or the variation margins and their composition, as well as the margin calls.**

**A decree specifies the market infrastructures subject to these provisions.**

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*Replaced by Act No. 2010-1249 of 22 October 2010 Art. 8 Official Journal of 23 October 2010*

## Chapter III Additional supervision of financial conglomerates

*Title inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

### Section 1 Identification of financial conglomerates

*Section inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

Art. L. 633-1. – The Autorité de Contrôle Prudentiel and the Autorité des Marchés Financiers shall, in conjunction, where necessary, with the supervisory authorities of the regulated entities of the Member States of the European Union or other European Economic Area Member States, identify the groups that come within the scope of the additional supervision for financial conglomerates and shall exchange for said purpose all the information required for the performance of their respective duties.

Where a group has been identified as a financial conglomerate and the Autorité de Contrôle Prudentiel is designated as the coordinator of the additional supervision pursuant to the provisions of Article L. 633-2, it shall inform the group's leading entity thereof, or, failing that, the regulated entity which posts the highest balance sheet total in the group's most important financial sector. It shall also inform the competent authorities who approved the group's regulated entities and the competent authorities of the Member State of the European Union or other European Economic Area Member State in which the mixed financial holding company has its registered office, as well as the European Commission.

*Inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

*Amended by le decree No. 2005-1564 of 15 December 2005 Art. 14 Official Journal of 16 December 2005*



*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

## Section 2 Designation of the coordinator

*Section inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

Art. L. 633-2. - I. - The coordinator is the competent authority responsible for the coordination and provision of the additional supervision. After consultation with the competent authorities concerned and the financial conglomerate, it may determine the method to be used to calculate the additional requirements in terms of equity capital adequacy and decide not to include any particular entity in the calculation parameters of the additional requirements in terms of equity capital adequacy in certain cases specified in the regulations.

II.- The coordinator is the competent authority of one of the States party to the European Economic Area Agreement which meets criteria determined in the regulations.

*Inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

## Section 3 Duties of the coordinator

*Section Inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

Art. L. 633-3. – Where it is designated as coordinator, the Autorité de Contrôle Prudentiel is responsible, with regard to the additional supervision, for:

a) Coordination of the collection and dissemination of any information that is useful in the normal course of business and in emergency situations and, in particular, of any important information relating to the prudential supervision exercised by a competent authority pursuant to the sectoral rules;

b) The prudential supervision of a financial conglomerate and assessment of its financial situation.

c) Assessment of the application of the rules relating to equity capital adequacy, risk exposure and the transactions between the conglomerate's different entities pursuant to the provisions of Article L. 517-8 of this code and of Article L. 334-8 of the Insurance Code;

d) Assessment of the financial conglomerate's structure, organisation and internal auditing facilities;

e) Planning and coordinating the prudential activities, in cooperation with the competent authorities concerned.

*Inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

## Section 4 Cooperation and exchanges of information for the purposes of additional supervision

*Section inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

Art. L. 633-4. – Where the coordinator of a financial conglomerate is an authority of another Member State of the

European Union or a State party to the European Economic Area Agreement, it shall perform the duties indicated in Article L. 633-3 in regard to the entities established in France.

*Inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

Art. L. 633-5. – To facilitate provision of the additional supervision, the Autorité de Contrôle Prudentiel shall enter into coordination agreements with the competent authorities concerned, and, where necessary, with any other interested competent authority. Said agreements shall be published in the Official Journal of the French Republic. The may entrust additional assignments to the coordinator and specify the procedures to be followed for the additional supervision. They may also specify the arrangements for coordination with other competent authorities.

*Inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Art. L. 633-6. – The Autorité de Contrôle Prudentiel and, where necessary, the Autorité des Marchés Financiers, shall cooperate with the competent authorities responsible for supervising the regulated entities belonging to a financial conglomerate and, where said authorities do not provide such supervision, with the coordinator. The implementing provisions of this article are determined in the regulations.

*Inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Art. L. 633-7. – In the performance of their respective duties, the competent authorities may exchange information relating to the regulated entities belonging to a financial conglomerate with the central banks of the Member States of the European Union or other States party to the European Economic Area Agreement, the European System of Central Banks and the European Central Bank.

*Inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

## Section 5 Provision of supervision

*Section inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

Art. L. 633-8. - Articles L. 612-24, L. 612-26 and L. 612-44 shall apply to all the entities located in a Member State of the European Union or another State party to the European Economic Area Agreement, regulated or otherwise, that belong to a financial conglomerate subject to the coordination of the Autorité de Contrôle Prudentiel.

*Inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

Art. L. 633-9. – As an exception to Act No. 68-678 of 26 July 1968 relating to the communication of documents and information of an economic, commercial, industrial, financial or technical nature to foreign individuals or foreign legal entities, any entity established in France which belongs to a

financial conglomerate having an authority of a European Union Member State or another State party to the European Economic Area Agreement as its coordinator shall be required to send the coordinator, at its request, any information relevant to the additional supervision.

*Inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

Art. L. 633-10. – Where the competent authorities of a European Union Member State or another State party to the European Economic Area Agreement wish, in specific cases, to verify the information relating to an entity established in France, regulated or otherwise, belonging to a financial conglomerate and referred to in Article L. 612-26, they shall ask the Autorité de Contrôle Prudentiel or, where applicable, the Autorité des Marchés Financiers, to have such verification carried out.

The Autorité de Contrôle Prudentiel or, where applicable, the Autorité des Marchés Financiers, shall initiate said verification by carrying it out itself, by allowing the authority which made the request to carry it out, or by allowing an auditor or an expert to do so.

Where it does not carry out the verification itself, the competent authority which made the request may participate therein if it so wishes.

*Inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

Art. L. 633-11. – For the purposes of the additional supervision provided for in this chapter, the Autorité de Contrôle Prudentiel may enter into the agreements referred to in Article L. 632-13 with the competent authorities of a State which is not party to the European Economic Area Agreement in order to ensure the supervision of any entity belonging to a financial conglomerate.

*Inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

*Amended by Order No. 2007-1490 of 18 October 2007 Art. 5 Official Journal of 19 October 2007*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

## Section 6 Execution measures

*Section inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

Art. L. 633-12. - I. - If the Autorité de Contrôle Prudentiel, where it is designated as coordinator, notes that the regulated entities of a financial conglomerate are meeting the requirements laid down in Article L. 517-8 but their solvency could nevertheless be compromised, or that the transactions between the group's entities or the risk exposures undermine said regulated entities' financial situation, it may implement the powers invested in it by Section 1 of Chapter III of Part I of Book VI of this code against the mixed financial holding company.

II. - If the Autorité de Contrôle Prudentiel, where it is designated as coordinator, notes that one or more regulated entities or a mixed financial holding company of a financial conglomerate are not meeting the requirements laid down in Article L. 517-8 or Article L. 517-9, or have not complied with a recommendation, or have disregarded a warning, or failed to

meet any specific condition imposed or commitment made relative to the additional supervision, or have failed to comply with an injunction, it may take the following measures against the mixed financial holding company:

III. - The relevant sectoral authorities, including the Autorité de Contrôle Prudentiel, may use the powers to impose penalties conferred on them for the sectoral supervision of the regulated entities whose additional supervision is entrusted to them.

IV. - Where the coordinator is a competent authority of another European Union Member State or a State party to the European Economic Area Agreement, it may impose on a mixed financial holding company having its registered office in France the penalties stipulated in this article or the measures imposed by its own domestic law.

*Inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

Art. L. 633-13. – Where a regulated entity uses its membership of a financial conglomerate to totally or partially elude application of the sectoral rules applicable to it, the Autorité de Contrôle Prudentiel may use the powers referred to in Sections 5 to 7 of Chapter II and in Section 1 of Chapter III of Part I of Book VI.

Where a regulated entity referred to in the previous paragraph is an investment firm, the Autorité des Marchés Financiers may, without prejudice to the competence of the Autorité de Contrôle Prudentiel, use the powers referred to in subsections 3, 4 and 5 of Section IV of the sole Chapter of Part II of Book VI.

*Inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 82 and 109 Official Journal of 7 May 2005*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

## Section 7 Parent companies having their registered office outside the European Economic Area

*Section inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

Art. L. 633-14. – Where the regulated entities belonging to a group that conducts business in both the banking and investment services sector and the insurance sector have as their parent entity a company having its registered office in a State which is neither a Member State of the European Union nor a State party to the European Economic Area Agreement, the Autorité de Contrôle Prudentiel shall, where it meets the conditions for acting as coordinator laid down in Article L. 334-9, verify, on its own initiative or at the request of the parent entity or of a regulated entity approved in a Member State of the European Union or a State party to the European Economic Area Agreement, that said regulated entities are subject to additional supervision by a competent authority of the third country equivalent to that required under this subsection. Said authority shall consult the competent authorities concerned.

If no equivalent consolidated supervision exists, the competent authorities concerned shall designate a coordinator

and apply the provisions relating to additional supervision to those regulated entities in the same way.

In order to provide the additional supervision to regulated entities belonging to a financial conglomerate whose parent company has its registered office in a State which is not party to the European Economic Area Agreement, the competent authorities concerned may also apply any other methods they consider appropriate. Said methods must have been validated by the Autorité de Contrôle Prudentiel, where it meets the conditions for acting as coordinator laid down in Article L. 334-9, after consultation with the other competent authorities concerned. The competent authorities concerned may, inter alia, require the formation of a mixed financial holding company having its registered office in a Member State of the European Union or another State party to the European Economic Area Agreement and apply the provisions relating to additional supervision to the regulated entities of the financial conglomerate headed up by said mixed financial holding company. The methods referred to in this paragraph shall be notified to the competent authorities concerned and to the European Commission.

*Inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

Art. L. 633-15. – For the purposes of the additional supervision referred to in this chapter, the Autorité de Contrôle Prudentiel may enter into the agreements referred to in Article L. 633-5 with the competent authorities of a State which is not party to the European Economic Area Agreement in order to ensure the supervision of any entity, regulated or otherwise, belonging to a financial conglomerate.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

Art. L. 642-1. – The penalties imposed by Article 226-13 of the Criminal Code shall also apply in the event of any member, staff member or employee of the Autorité des Marchés Financiers, or any expert appointed to a consultative commission referred to in paragraph III of Article L. 621-2, violating the professional secrecy instituted by Article L. 621-4, without prejudice to the provisions of Article 226-14 of the Criminal Code.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 21 I, II, Art. 48 II 7 Official Journal of 2 August 2003*

Art. L. 642-2. – Whoever obstructs an inspection or investigation of the Autorité des Marchés Financiers carried out as determined in Articles L. 621-9 to L. 621-9-2, or who provides it with inaccurate information, shall incur a penalty of two years' imprisonment and a fine of 300,000 euros.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 21 I, III, Art. 48 II 7 Official Journal of 2 August 2003*

Art. L. 642-3. – Whoever obstructs the sequestration measures or fails to comply with a temporary ban on business activity imposed pursuant to Article L. 621-13 shall incur a penalty of two years' imprisonment and a fine of 300,000 euros.

Whoever fails to pay into court the sum determined by the judge pursuant to Article L. 621-13 within forty-eight hours of the date on which the decision became enforceable shall incur a penalty of two years' imprisonment and a fine of 75,000 euros.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 21 I, IV, Art. 48 II 7 Official Journal of 2 August 2003*

## Part IV Criminal Provisions

### Chapter I Provisions relating to the Autorité de Contrôle Prudentiel

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

Art. L. 641-1. – The penalties imposed by Article 226-13 of the Criminal Code shall apply to whoever participates, or has participated, in the performance of the duties of the Autorité de Contrôle Prudentiel and who violates, or has violated, the professional secrecy instituted by Article L. 612-17, without prejudice to the provisions of Article 226-14 of the Criminal Code.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

### Chapter II Provisions relating to the Autorité des Marchés Financiers

*(Part LSF 2003-706 Art. 21 Section 1, 2 and 3 deleted LSF 2003-706 Art. 48 II )*

# BOOK VI BANKING INSTITUTIONS AND OTHER FINANCIAL INSTITUTIONS

## PART I COMPETENT INSTITUTIONS FOR REGULATION AND SUPERVISION

*Part amended by Order No. 2009-866 of 15 July 2009 Art. 15 Official Journal of 16 July 2009 and Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 20103333*

### Chapter I Regulations

*(Title Art. 28 LSF (Loi de Sécurité Financière – Financial Security Act) 2003-706)*

*(Sections deleted LSF 2003-706 Art. 48)*

Art. L. 611-1. - The Minister for the Economy lays down the rules for credit institutions relating, inter alia, to:

1. The amount of the credit institutions' capital and the circumstances in which direct or indirect equity interests in said institutions and in the financial institutions referred to in Article L. 511-21 which directly or indirectly hold an effective controlling interest in one or more credit institutions may be acquired, increased or sold;

2. The conditions for establishing networks;

3. The circumstances in which said institutions may acquire equity interests;

4. The conditions applicable to the transactions that credit institutions or their agents may carry out, particularly in their relations with their clients and also with regard to the rules pertaining to competition;

5. Organisation of the common services;

6. The management standards credit institutions must comply with in order to ensure their liquidity, their solvency and the balance of their financial structure, as well as the circumstances in which said standards are applicable on a consolidated basis, including the possibility of there being no parent institution having its registered office in France;

7. Publication of the information intended for the competent authorities;

8. The instruments and rules of credit, without prejudice to the tasks entrusted to the European System of Central Banks by Article 105, paragraph 2, of the Founding Treaty of the European Community;

9. The rules relating to the protection of depositors referred to in Article L. 312-4;

10. The rules applicable to the accounting organisation, the monitoring and security mechanisms in the computing sphere and the internal auditing procedures.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 28 II 1, 2, Art. 48 II 2 Official Journal of 2 August 2003*

*Amended by Order No. 2004-1201 of 12 November 2004 Art. 9 Official Journal of 16 November 2004*

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 77 Official Journal of 7 May 2005*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 15 Official Journal of 16 July 2009*

Art. L. 611-1-1. – The Minister for the Economy lays down the rules for payment institutions relating, inter alia, to:

1 The amount of the payment institutions' capital;

2 The criteria that determine whether an amendment to the conditions of approval issued to a payment institution shall be subject, as applicable, to prior authorisation from the Autorité de Contrôle Prudentiel (ACP), a declaration or a notification;

3 The conditions applicable to the transactions that payment institutions or their agents may carry out, particularly in their relations with their clients and also with regard to the rules pertaining to competition;

4 The arrangements for protecting the clients' funds;

5 The manner in which decisions to withdraw approval shall be made known to the public and the circumstances in which the funds received from users of payment services shall be returned to them or transferred to another credit institution or another approved payment institution or to the Caisse des Dépôts et Consignations;

6. The management standards that credit institutions must comply with in order to ensure their liquidity, their solvency and the balance of their financial structure, as well as the circumstances in which said standards are applicable on a consolidated basis, including the possibility of there being no parent institution having its registered office in France;

7. The rules applicable to the accounting organisation, the monitoring and security mechanisms in the computing sphere and the internal auditing procedures.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 15 Official Journal of 16 July 2009*

Art. L. 611-1-2. – The Minister for the Economy lays down the rules for the agents of the payment service providers relating, inter alia, to:

1 The conditions of respectability and aptitude;

2 The registration procedures referred to in Article L. 523-1.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 15 Official Journal of 16 July 2009*

Art. L. 611-2. – In the event of any violation of the rules laid down by the Minister regarding application of the provisions of paragraph 1 of Article L. 611-1, and without prejudice to the provisions of Article L. 233-14 of the Commercial Code, the Public Prosecutor, the Autorité de Contrôle Prudentiel or any shareholder may ask the court to suspend exercise of the voting rights attached to the shares or membership shares of credit institutions or financial institutions which are irregularly held, either directly or indirectly, until the situation is regularised.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 28 II 1, 2, 3, Art. 48 II 2 Official Journal of 2 August 2003*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*



Art. L. 611-3. – The Minister for the Economy shall determine, after consultation with the Autorité des Marchés Financiers (AMF) and the Comité Consultatif de la Législation et de la Réglementation Financières (CCLRF), and without prejudice to the duties performed by the Autorité des Marchés Financiers in regard to the portfolio management companies referred to in Article L. 532-9, the regulations applicable to the investment service providers described in Article L. 531-1 and, where applicable, the market undertakings, legal entities having as their primary or sole activity the clearing of financial instruments and the legal entities having as their primary or sole business activity the custody and administration of financial instruments and relating to:

1. The amount of the minimum capital requirement, commensurate with the services the investment service provider intends to offer;

2. The standards referred to in paragraphs 5, 6, 7 and 10 and, where applicable, paragraph 8, of Article L. 611-1.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 28 II 1, 4, Art. 48 II 2 Official Journal of 2 August 2003*

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 78 Official Journal of 7 May 2005*

*Amended by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

Art. L. 611-3-1. — The Minister for the Economy may, after consultation with the Comité Consultatif de la Législation et de la Réglementation Financières and at the request of one or more of the bodies representing financial sector professionals that are included in a list approved by the Minister, approve by decree the conduct of business rules they have drawn up in relation to the marketing of the financial instruments referred to in Article L. 211-1, **the banking transactions referred to in Article L. 311-1, the payment services referred to in Article L. 314-1**, and the savings products referred to in Part II of Book II of this code, as well as individual insurance contracts having surrender values, capital redemption policies and the contracts referred to in Articles L. 132-5-3 and L. 441-1 of the Insurance Code.

*Inserted by Order No. 2008-1271 of 5 December 2008 Art. 1 Official Journal of 6 December 2008*

*Amended by Act No. 2010-1249 of 23 October 2010 Art. 36 Official Journal of 23 October 2010*

Art. L. 611-4. – The Minister for the Economy shall also determine:

1. The conditions under which investment firms may carry out the transactions referred to in paragraph 2 of Article L. 321-2;

2. The circumstances in which investment firms other than portfolio management companies may carry out the transactions referred to in Article L. 531-5;

3. The circumstances in which direct or indirect equity interests may be acquired, increased or sold in investment firms other than portfolio management companies.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 28 II 1, Art. 46 VI 1, Art. 48 II 2 Official Journal of 2 August 2003*

*Amended by Order No. 2009-897 of 24 July 2009 Art. 1 Official Journal of 25 July 2009*

Art. L. 611-5. – The orders of the Minister for the Economy and the regulations of the Autorité des Normes Comptables (French Accounting Standards Authority) may

differ according to the legal status of credit institutions, payment institutions or investment firms, the size of their networks or the characteristics of their business.

They may, where necessary, lay down conditions for granting exceptional and temporary individual exemptions.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 28 II 1, 5, Art. 48 II 2 Official Journal of 2 August 2003*

*Amended by Order No. 2009-79 of 22 January 2009 Art. 6 Official Journal of 23 January 2009*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 15 Official Journal of 16 July 2009*

Art. L. 611-6. – Orders relating to the following shall not be submitted to the Comité Consultatif de la Législation et de la Réglementation Financières for an opinion:

1. With reference to the Mutual or Cooperative Banks, determination of the conditions of admission to membership and the resultant limitations in the scope of said institutions' activities;

2. Determination of the remits of the specialised financial institutions, the Caisses d'Épargne et de Prévoyance and the Municipal Credit Banks;

3. The principles applicable to banking transactions linked to Government aid;

4. The rules applicable to investment services provided by investment firms and credit institutions.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 28 II 1, 6, Art. 48 II 2 Official Journal of 2 August 2003*

Art. L. 611-7. – The regulations of the Comité de la Réglementation Bancaire et Financière in force prior to Financial Security Act No. 2003-706 of 1 August 2003 may be amended or repealed by order of the Minister for the Economy as provided for in Article L. 611-1.

*Repealed by LSF 2003-706 Art. 48 and reinserted by Act No. 2006-387 of 31 March 2006 Art. 26 Official Journal of 1 April 2006*

Art L. 611-8 to L. 611-9: *Repealed by LSF 2003-706 Art. 48*

## Chapter II The Autorité de Contrôle Prudentiel

*Heading amended by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

### Section 1 Duties and scope

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-1. – I. – The Autorité de Contrôle Prudentiel, an independent administrative authority, ensures the stability of the financial system and protection of the clients, the insured, and the members and beneficiaries of the entities subject to its supervision.

Said authority supervises said entities' compliance with the provisions of the Monetary and Financial Code, as well as the regulatory provisions laid down for its implementation, the Insurance Code, Book IX of the Social Security Code, the Mutuality Code, Book III of the Consumer Code, the approved conduct of business rules and any other legislative or regulatory

provision which, if disregarded, results in non-compliance with the aforementioned provisions.

II. – It is responsible for:

1 Considering the requests for individual authorisations or exemptions that are sent to it and making the decisions referred to in the laws and regulations applicable to the entities subject to its supervision;

2 Carrying out supervision, at all times, of the financial situation and operational arrangements of the entities referred to in paragraph I of Article L. 612-2; it shall monitor, inter alia, their compliance with the solvency requirements and also, for the entities referred to in points 1 to 4 of subparagraph A of paragraph I of Article L. 612-2, the rules relating to the maintenance of their liquidity and, for the entities referred to points 1 to 3, 5, 7 and 8 of subparagraph B of paragraph I of said article, shall ensure that they are indeed at all times able to meet the commitments they have assumed in respect of their insured parties, members, beneficiaries or reinsured firms and that they effectively do so;

3 Ensuring that the entities subject to its supervision comply with the rules intended to protect their clients deriving, inter alia, from any law or regulation or any conduct of **business rules approved at the request of a professional body, as well as the good practices of their profession that it approves or recommends**, and likewise the suitability of the means and procedures they implement for said purpose; it shall also verify the adequacy of the means and procedures that said entities implement in order to comply with Book I of the Consumer Code.

For the performance of its duties, the Autorité de Contrôle Prudentiel has, in respect of the entities referred to in Article L. 612-2, the power to supervise, the power to take public order administrative measures and the power to sanction. It may, moreover, make known to the public any information that it considers necessary for the performance of its duties, notwithstanding the professional secrecy referred to in Article L. 612-17.

III. – In the performance of its duties, the Autorité de Contrôle Prudentiel shall take into account the objectives of financial stability throughout the European Economic Area and convergent implementation of the domestic and Community provisions, taking due account of the good practices and recommendations arising from the Community supervision provisions. It shall cooperate with the competent authorities of the other States. Within the European Economic Area in particular, it shall lend its support to the supervisory structures for cross-border groups.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 23 October 2010 Art. 36 Official Journal of 23 October 2010*

Art. L. 612-2. – I. – The following are supervised by the Autorité de Contrôle Prudentiel:

A. – In the banking, payment services and investment services sector:

1 Credit institutions;

2 The following entities:

a) Investment firms other than portfolio management companies;

b) Market undertakings;

c) Members of the clearing houses;

d) The entities authorised to provide the custodianship or administration services for financial instruments referred to in paragraphs 4 and 5 of Article L. 542-1;

3 Payment institutions;

4 Financial holding companies and mixed financial holding companies;

5 Money changers;

6 The associations and foundations referred to in paragraph 5 of Article L. 511-6;

7 The legal entities referred to in Article L. 313-21-1.

The ACP's supervision shall be applied to the investment services provided by the entities referred to in paragraphs 1 and 2 without prejudice to the competence of the Autorité des Marchés Financiers as regards supervision of the conduct of business rules and other professional obligations.

The ACP may request the opinion of the Banque de France in connection with its supervision of the entities referred to in paragraph 3 with regard to the duty to monitor the proper operation and the security of the payment systems conferred on it by paragraph I of Article L. 141-4. In this context, the Banque de France may bring any information to the attention of the ACP.

B. – In the insurance sector:

1 The companies carrying out the direct insurance business referred to in Article L. 310-1 of the Insurance Code **and those referred to in the last paragraph of said article**;

2 Companies carrying out reinsurance business whose registered office is in France;

3 The mutual societies and unions governed by Book II of the Mutuality Code and the unions that manage the federal guarantee systems referred to in Article L. 111-6 of the Mutuality Code, as well as the mutual group unions referred to in Article L. 111-4-2 of said code;

4 The mutual societies and unions referred to in Book I that manage the settlements and contracts on behalf of the mutual societies and unions governed by Book II, solely for the purposes of Part VI of Book V of this code;

5 The provident institutions, unions and joint provident groups governed by Part III of Book IX of the Social Security Code;

6 The companies belonging to insurance groups and those belonging to the mixed insurance groups referred to in Article L. 322-1-2 of the Insurance Code;

7 The universal guarantee fund for tenancy risks referred to in Article L. 313-20 of the Housing and Construction Code;

8 The securitisation vehicles referred to in Article L. 310-1-2 of the Insurance Code.

II. – The ACP may impose its supervision on:

1 Any individual or legal entity who/which has received **from an institution** carrying out insurance transactions an authorisation to carry out underwriting or management activities or to underwrite a group insurance contract or who/which carries out, in whatever capacity, an insurance or reinsurance intermediation activity referred to in Article L. 511-1 of the Insurance Code;

2 Any individual or legal entity who/which mediates, directly or indirectly, between an entity referred to in subparagraph 3 or 4 of paragraph B and an individual who wishes to join, or is already a member of, said entity;

3 Any intermediary in banking transactions and payment services.

III. – The Autorité de Contrôle Prudentiel has responsibility for monitoring compliance by the entities referred to in paragraphs I and II operating in France under freedom to provide services or freedom of establishment with the provisions applicable to them, taking account of the supervision carried out by the competent authorities of the Member State in which their registered office is located which have sole responsibility, inter alia, for overseeing their financial situation, operating conditions and solvency, as well as their ability to meet the commitments they have assumed in respect of their insured parties, members, beneficiaries and reinsured companies.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 12 Official Journal of 23 October 2010*

Art. L. 612-3. – The following are not subject to the ACP's supervision:

1 The management transactions of a statutory sickness and maternity and accidents at work and occupational diseases insurance scheme referred to in Part IV of Book IV of the Insurance Code;

2 The transactions of a supplementary pension scheme carried out by the institutions governed by Book IX of the Social Security Code that relate to inter-occupational and general compensation;

3 The management transactions of a statutory sickness and maternity insurance scheme and those associated with activities and services carried out on behalf of the State or of other public authorities referred to in subparagraph 4 of paragraph I of Article L. 111-1 of the Mutuality Code.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

## Section 2 Composition and operations

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

### Subsection 1 Composition

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-4. – The Autorité de Contrôle Prudentiel has a Board and an Enforcement Commission.

Except as otherwise provided, the tasks entrusted to the Autorité de Contrôle Prudentiel shall be performed by the Board, which sits in plenary session, in restricted session, as a Sectoral Sub-Commission or, where necessary, as a specialised commission.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-5. – The Board of the Autorité de Contrôle Prudentiel is composed of **nineteen** members:

1 The Governor of the Banque de France, or the Deputy Governor he has designated to represent him, as Chairman;

**1 bis The Chairman of the Autorité des Marchés Financiers;**

**1 ter Two members appointed for a term of five years on account of their competence in financial and legal matters and their experience in insurance and banking, one by the Chairman of the National Assembly and the other by the Chairman of the Senate;**

2 The Chairman of the Autorité des Normes Comptables;

3. A councillor of the Conseil d'Etat proposed by the Vice-President of that body;

4. A justice of the court of cassation proposed by the chief justice of that court;

5. A senior member of the court of auditors (Cour des comptes) designated by the auditor general;

6 A Vice-Chairman with experience in insurance matters and two other members, all three chosen on account of their competence in the spheres of client protection or quantitative and actuarial techniques or in other fields relevant to the performance of the ACP's duties;

7 Four members chosen on account of their competence in the spheres of insurance, mutual societies, provident societies or reinsurance;

8 Four members chosen on account of their competence in the fields of banking transactions, payment services or investment services.

The members of the ACP's Board referred to in paragraphs 3 to 8, with the exception of the Vice-Chairman of the Autorité, are appointed for a term of five years by order of the Minister for the Economy.

The Vice-Chairman of the Autorité de Contrôle Prudentiel is appointed for a term of five years by a joint order of the Ministers for the Economy, Social Security and the Mutual Societies **issued after seeking the opinions of the Finance Commissions of the National Assembly and of the Senate. Said commissions' opinions shall be deemed favourable upon expiry of a period of thirty days commencing on the date of receipt of the opinion request.**

The members may be reappointed once. They must not be aged above seventy years on the day of their appointment or reappointment.

In the event of a Board member's seat becoming vacant for whatever reason and being duly noted by the Chairman, it shall be filled for the unexpired portion of the former member's term of office. A term of office of less than two years shall not be taken into account for application of the reappointment rule.

A Board member belonging to the categories referred to in paragraphs **1 ter and 3 to 8** may be removed from office only through the appointments procedure, where the majority of the other members of the Board find that he is no longer able to sit on the Board on account of an incapacity or a serious breach of his obligations preventing him from completing his term of office.

**The members of the Board of the Autorité de Contrôle Prudentiel enumerated in paragraphs 1 ter and 3 to 8 shall receive compensation under a scheme determined by decree.**

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 14 Official Journal of 23 October 2010*

**NB (1): The members referred to in paragraph 1 ter of Article L. 612-5 of the Monetary and Financial Code shall be appointed within three months of the promulgation of**

**this Act for the period ending upon the next reappointment of the Board of the Autorité de Contrôle Prudentiel.**

Art. L. 612-6. – The restricted session of the Board is composed of eight members:

1 The Governor of the Banque de France or the Deputy Governor appointed to represent him, as Chairman;

2 The Vice-Chairman;

3 Two members appointed by the Board from among the members referred to in paragraph 7 of Article L. 612-5;

4 Two members appointed by the Board from among the members referred to in paragraph 8 of Article L. 612-5;

5 Two members appointed by the Board from among the members referred to in paragraphs 2 to 6 of Article L. 612-5.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-7. – The Board creates two Sectoral Sub-Commissions within itself:

1 The Sectoral Sub-Commission for insurance is composed of eight members: the Vice-Chairman, the Governor of the Banque de France or the Deputy Governor appointed to represent him, the four members referred to in paragraph 7 of Article L. 612-5 and two members appointed by the Board from among the members referred to in paragraphs 2 to 6 of the aforementioned article;

2 The Sectoral Sub-Commission for banking is composed of eight members: the Governor of the Banque de France or the Deputy Governor appointed to represent him, the Vice-Chairman, the four members referred to in paragraph 8 of Article L. 612-5 and two members appointed by the Board from among the members referred to in paragraphs 2 to 6 of the aforementioned article.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-8. – The Board may create one or more Specialised Commissions within itself and empower them to make decisions of individual scope, as provided for in a decree issued following consultation with the Conseil d'Etat.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-9. – The Enforcement Commission is composed of **six** members:

1 **Two councillors of the Conseil d'Etat designated** by the Vice-President of that body, and a justice of the court of cassation, designated by the chief justice of that court;

2 Three members chosen on account of their competence in matters relevant to the performance of the ACP's duties, appointed by order of the Minister for the Economy.

Deputies shall be appointed on the same bases.

The Vice-President of the Conseil d'Etat shall designate one of the two councillors of the Conseil d'Etat referred to in paragraph 1 to chair the Enforcement Commission.

The functions of a member of the Enforcement Commission are incompatible with those of a member of the Board.

The members of the Enforcement Commission shall be appointed for a term of five years. They may be reappointed once. They must not be aged above seventy years on the day of their appointment or reappointment.

In the event of an Enforcement Commission member's seat becoming vacant for whatever reason and being duly noted by the Chairman, it shall be filled for the unexpired portion of the former member's term of office. A term of office of less than two years shall not be taken into account for application of the reappointment rule.

A member of the Enforcement Commission may be removed from office only through the appointments procedure, where the majority of the other members of the Enforcement Commission find that he is no longer able to sit on the Board on account of an incapacity or a serious breach of his obligations preventing him from completing his term of office.

The compensation scheme for members of the commission is determined by decree.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 15 Official Journal of 23 October 2010*

NB: (Within three months of the promulgation of this Act, the Vice-President of the Conseil d'Etat shall appoint the additional councillor referred to in the second paragraph of Article L. 612-9 of the Monetary and Financial Code, who shall take up his duties on the date of entry into force of paragraph I of this article for the period ending upon the next reappointment of the Enforcement Commission of the Autorité de Contrôle Prudentiel.)

Art. L. 612-10. – Any member of the Board or of the Enforcement Commission of the ACP must inform the Chairman of the Autorité de Contrôle Prudentiel:

1 Of the interests he held during the two years preceding his appointment and those he currently holds or may come to hold;

2 Of the corporate, economic or financial functions he performed during the two years preceding his appointment and those he currently performs or may come to perform;

3 Of any remit within a legal entity he held during the two years preceding his appointment and those he currently holds or may come to hold;

Said information, as well as information concerning the Chairman, shall be made available to the members of the Board and of the Enforcement Commission of the Autorité de Contrôle Prudentiel.

No member of the Board or of the Enforcement Commission of the Autorité de Contrôle Prudentiel may deliberate or participate in their proceedings pertaining to a matter in which he himself or, where applicable, a legal entity in which he performs functions or holds a remit, or for which he acts as avocat or advisor, has an interest; nor may he participate in a deliberation concerning a matter in which he himself or, where applicable, a legal entity in which he performs functions or holds a remit, or for which he acts as avocat or advisor, has represented one of the parties involved during the two years preceding said deliberation.

No member of the Autorité de Contrôle Prudentiel's Board or of its Enforcement Commission may be an employee of, or hold a remit in, an entity subject to the ACP's supervision.

The Chairman of the Autorité de Contrôle Prudentiel shall take the appropriate measures to ensure compliance with the obligations and prohibitions deriving from this article.



The internal regulation of the Autorité de Contrôle Prudentiel determines the procedures for preventing conflicts of interest.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-11. – The Director General of the Treasury, or his representative, shall attend all the sessions of the Autorité de Contrôle Prudentiel, without voting rights. He shall not participate in the Enforcement Commission's deliberations.

The Social Security Director, or his representative, shall attend the meetings of the Sectoral Sub-Commission for Insurance, or the ACP's other sessions, without voting rights, where they deal with the institutions governed by the Mutuality Code or the Social Security Code. He shall not participate in the Enforcement Commission's deliberations.

**The Director General of the Treasury, the Social Security Director, or their representatives**, may, other than in relation to sanctions, request a second deliberation as provided for in a decree issued following consultation with the Conseil d'Etat.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

*Amended by le decree No. 2010-291 of 18 March 2010 Art. 2 Official Journal of 19 March 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 12 Official Journal of 23 October 2010*

## Subsection 2 Organisation

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-12. – I. – The Board in plenary session lays down the ACP's organisational and functional principles, its budget and its bylaws. It deals with any question of general scope common to the banking and insurance sectors and analyses the risks of those sectors in relation to the economic situation. It deliberates the priorities for supervision. **Each year, it draws up a report to the President of the Republic and to Parliament which is published in the Official Journal.**

Individual questions are dealt with by the Board in restricted session, by one of the two Sectoral Sub-Commissions or, where applicable, by a Specialised Commission created pursuant to Article L. 612-8.

Each Sectoral Sub-Commission is authorised to deal with individual questions and general questions specific to its sector.

The restricted session of the Board is authorised to deal with individual questions relating to the additional supervision of the regulated entities belonging to a financial conglomerate to examine the acquisitions, increases and disposals of equity interests likely to have a significant impact on the entities in the banking sector and likewise those in the insurance sector.

Taking into account, inter alia, their impact on financial stability, the Chairman of the Autorité de Contrôle Prudentiel, or the Vice-Chairman, may entrust the examination of questions of general scope relating to one of the two sectors to the plenary session of the Board and the individual questions relating to one of the two sectors to the restricted session of the Board.

II. – The Chairman of the Autorité de Contrôle Prudentiel determines the agenda of the various sessions of the Board. The agenda of the Sectoral Sub-Commission for insurance is

determined by the Chairman of the Autorité de Contrôle Prudentiel on a proposal from the Vice-Chairman.

**The Chairman of the Autorité de Contrôle Prudentiel shall be heard by the Finance Commissions of the two Assemblies (i.e. the National Assembly and the Senate) if they so request and may ask to be heard by them.**

III. – The Vice-Chairman chairs the Sectoral Sub-Commission for Insurance. In the event of the Vice-Chairman being unable to attend, the Governor or a Deputy Governor of the Banque de France shall chair the Sectoral Sub-Commission for Insurance.

The Governor of the Banque de France may delegate the chairmanship of the Board or of one of its sessions or Commissions to the Vice-Chairman. Where the Vice-Chairman presides, the Deputy Governor representing the Governor may participate in the deliberations.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 13 Official Journal of 23 October 2010*

Art. L. 612-13. – Each session of the ACP's Board may deliberate only if the majority of its members are present.

The decisions shall be taken on a majority of the votes cast. In the event of a tied vote, the Chairman of the session shall have a casting vote.

In an emergency duly declared by the Chairman of the Autorité de Contrôle Prudentiel, the ACP's session deciding the matter may, other than in relation to sanctions, give a ruling via a written consultation.

A decree issued following consultation with the Conseil d'Etat lays down the rules applicable to the procedure and the deliberations of the sessions of the Autorité de Contrôle Prudentiel and the circumstances in which they may, other than in relation to sanctions, give a ruling via teleconferencing.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-14. – I. – The ACP may create one or more consultative commissions.

A commission has been established to advise on the lists, the models, the frequency and the time limits for transmission of the documents and periodic information that must be submitted to the ACP.

The ACP designates the members of said commission, which is composed mainly of professionals from the banking and insurance sectors who are not members of the ACP.

The ACP may consult the Comité Consultatif du Secteur Financier.

A decree issued following consultation with the Conseil d'Etat determines the conditions and limits within which:

1 The Board may delegate authority to its Chairman or, if he is absent or unable to attend, to the Vice-Chairman or another member, to make individual decisions within his field of competence;

2 The Chairman of the ACP may delegate his signing authority in matters where the laws or regulations grant him specific competence.

3 Where exceptional circumstances warrant it, the Chairman of the ACP may make decisions, other than in relation to sanctions, that fall within the competence of the

ACP's sessions; he shall report to the Board thereon as soon as possible.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

### Subsection 3 Operations

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-15. – A Secretary General shall be appointed by order of the Minister for the Economy on a proposal from the Chairman of the Autorité de Contrôle Prudentiel.

A First Assistant Secretary General, reporting to him, shall be appointed by the Chairman of the ACP, with the agreement of the Vice-Chairman and the approval of the Ministers for the Economy, for Social Security and for the Mutual Societies. The First Assistant Secretary General shall have experience in insurance or banking which complements that of the Secretary General.

On a proposal from the Secretary General, the ACP's Board shall lay down the units' organisational principles, determine the ethical rules applicable to the staff and establish the general framework for the recruitment and employment of the staff pursuant to the provisions applicable to permanent staff and officials.

The Secretary General shall organise and manage the ACP's units. The Chairman of the ACP may delegate power to him to appoint the staff of the ACP's units.

The Secretary General may receive a delegation of powers from the Board under conditions and within limits laid down in a decree issued following consultation with the Conseil d'Etat.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-16. – I. – In the performance of the duties entrusted to the Autorité de Contrôle Prudentiel, the Chairman of the ACP is empowered to act on its behalf before any court.

II. – The Autorité de Contrôle Prudentiel may file a civil action at any stage in criminal proceedings pursuant to Chapters I to III of Part VII of Book V of this code and to the criminal provisions of the Insurance Code, the Mutuality Code and the Social Security Code.

III. – Decisions concerning the Board's competence may be challenged before the Conseil d'Etat on the grounds of abuse of authority within two months of their notification or publication.

IV. – The decisions handed down by the Enforcement Commission may be the subject of an administrative-law appeal before the Conseil d'Etat brought by the individuals or legal entities sanctioned and by the Chairman of the Autorité de Contrôle Prudentiel, with the agreement of the session of the Board that initiated notification of the statement of objections, within two months of such notification. Where an individual or legal entity summoned lodges an appeal, the Chairman of the ACP may, in the same way, lodge an appeal within two months of the Autorité de Contrôle Prudentiel being notified of the summoned party's appeal.

V. – A decree issued following consultation with the Conseil d'Etat determines the implementing provisions of this article.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-17. – I. – Whoever participates, or has participated, in the performance of the duties of the Autorité de Contrôle Prudentiel shall be bound by professional secrecy under the terms and subject to the penalties referred to in Article L. 641-1.

II. – Said secrecy may not be raised against:

1 A court acting within the framework of either a court-ordered liquidation procedure initiated against an entity subject to the supervision of the Autorité de Contrôle Prudentiel or criminal proceedings;

2 The Administrative Courts hearing a case relating to the activities of the Autorité de Contrôle Prudentiel;

3 A Board of Enquiry in the context of a hearing referred to in the fourth subparagraph of paragraph II of Article 6 of the Order of 17 November 1958 on the functions of Parliamentary Assemblies.

4 The court of auditors in relation to the inspections entrusted to it by the law.

III. – The information gathered in the cases referred to in subparagraph 4 of paragraph II is covered by professional secrecy as provided for in Paragraph I of this article.

IV. – The Autorité de Contrôle Prudentiel is authorised to forward to the Institut National de la Statistique et des Études Économiques and to the statistical units of the ministries for Social Security and for the Mutual Societies the data that is transmitted to it by the institutions subject to its supervision and which is relevant to the compilation of the public statistics, inter alia with regard to health, retirement and welfare. The information thus gleaned is covered by professional secrecy under the conditions applicable to the ACP.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

## Section 3 Operational Resources

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-18. – The Autorité de Contrôle Prudentiel has financial autonomy within the limits of the revenue from the contribution referred to in Article L. 612-20, the balance of which is carried forward each year, and from any additional allocation the Banque de France may grant it.

The Autorité de Contrôle Prudentiel draws up its budget on a proposal from the Secretary General. Said budget is a supplementary budget of the Banque de France.

At the close of each financial year:

1 The funds allocated to the supplementary budget of the Autorité de Contrôle Prudentiel in excess of its charges are allocated by the Banque de France to a "Contributions of the Autorité de Contrôle Prudentiel Carried Forward Account". With effect from such allocation, the amount concerned is no longer included in the calculation of the taxable profit of the Banque de France within the meaning of paragraph II of Article 38 quinquies A of the Code Général des Impôts (General Tax Code);

2 In the event of the charges of the Autorité de Contrôle Prudentiel exceeding the funds allocated to it, the Banque de France shall balance the supplementary budget of the Autorité de Contrôle Prudentiel by debiting the corresponding sum from the "Contributions of the Autorité de Contrôle Prudentiel Carried Forward Account". The sum thus debited shall be

included in the calculation of the taxable profit of the Banque de France within the meaning of paragraph II of Article 38 quinquies A of the Code Général des Impôts upon its allocation to the supplementary budget of the Autorité de Contrôle Prudentiel.

The Act of 10 August 1922 relating to the organisation of the supervision of the expenses incurred does not apply to the Autorité de Contrôle Prudentiel.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-19. – I. – The Autorité de Contrôle Prudentiel has the resources provided by the Banque de France.

The Secretary General of the ACP shall incur expenses on behalf of the ACP within the limits of its budget. It is empowered by the Banque de France to enter into contracts and issue invitations to tender under the terms and conditions applicable to the contracts awarded by the Banque de France.

II. – The human resources of the units of the Autorité de Contrôle Prudentiel consist of staff employed by the Banque de France.

The supervisory body for insurance is at the service of the Banque de France as provided for in a decree issued following consultation with the Conseil d'Etat.

The staff members' terms and conditions of employment are drawn up by the Board on a proposal from the Secretary General, without prejudice to the more favourable provisions applicable to the staff covered by the Statute of the Banque de France and, for officials, pursuant to the regulations, inter alia of a statutory nature, that apply to them.

The Secretary General determines the individual amounts of the remuneration of the staff members of the ACP's units within the general framework established by the Board.

The staff members of the ACP's units shall be subject to the ethical rules drawn up by the Board on a proposal from the Secretary General consistent with the ethical rules applicable to the staff of the Banque de France. Where appropriate, by reason of their participation in the functions of the Banque de France, they may be subject to the rules of the Statute of the Banque de France.

The units of the ACP constitute a distinct institution of the Banque de France within the meaning of Article L. 2327-1 of the Labour Code, as provided for in Article L. 142-9. The staff members of the units of the Autorité de Contrôle Prudentiel, regardless of their status, are entitled to vote in and stand for election to the bodies that represent the institution's staff, as provided for in the Labour Code. Said representative bodies exercise their competence in respect of all said staff, without prejudice to the competence of the joint administrative commission of the supervisory body for insurance.

III. – Measures to adapt the provisions of the third to sixth subparagraphs of paragraph II, as well as those of the company-level agreements applicable to the staff of the Banque de France, to the members of the supervisory body for insurance are determined in a decree issued following consultation with the Conseil d'Etat.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-20. – I. – Entities subject to the supervision of the Autorité de Contrôle Prudentiel pursuant to Article L. 612-2 shall be liable for a contribution for supervisory costs which shall be paid to the Banque de France in respect of their business carried out as of 1 January of each year.

Entities and organisations having their registered office in another State party to the European Economic Area Agreement conducting their business in France through the establishment of a branch or under freedom to provide services shall not be liable for said contribution.

Entities exempted from the approval referred to in Articles L. 321-1, L. 321-1-1 and L. 321-9 of the Insurance Code, Articles L. 931-4 and L. 931-4-1 of the Social Security Code and Articles L. 211-7 and L. 211-7-2 of the Mutuality Code are exempted from the contribution.

The Banque de France shall allocate all revenue from the contribution to the budget of the Autorité de Contrôle Prudentiel.

II. – The following provisions apply to the contribution's basis of calculation:

A. – For the entities referred to in subparagraphs 1, 2, 3 and 4 of paragraph A of Article L. 612-2, the basis shall consist of:

1 The minimum equity capital requirements that ensure that the hedge ratios referred to in Articles L. 511-41, L. 522-14 and L. 533-2 determined during the financial year corresponding to the previous calendar year will be met. The minimum equity capital requirements shall be assessed on a consolidated basis for the entities covered by Articles L. 511-41-2, L. 533-4-1, L. 517-5 and L. 517-9. No additional contribution on a corporate basis shall be paid by the aforementioned entities that belong to a group for which a consolidated basis is calculated. Other entities shall pay a contribution calculated on a corporate basis;

2 The presentation standards for the minimum capital that enables the requirements set forth in Articles L. 511-11 and L. 532-2 to be met, determined during the financial year corresponding to the previous calendar year where the equity capital requirements do not apply.

B. – For the companies referred to in paragraph B of Article L. 612-2, the basis is made up of the premiums or contributions issued and accepted during the financial year corresponding to the previous calendar year, including ancillary items associated with premiums, contributions, contract costs and settlements and policy costs, net of taxes, disposals and cancellations, for the financial year and for all the previous financial years, to which the variation for the total of the premiums or contributions still to be issued during the same financial year is added, net of disposals.

C. – In view of the specific supervisory arrangements they are subject to, the following entities shall pay a special contribution:

1 Money changers, the entities referred to in subparagraph B 4 of paragraph I of Article L. 612-2 and the entities referred to in subparagraph A of Article I which are not required to comply with a hedge ratio under Articles L. 511-41 and L. 533-2 or with minimum capital presentation standards under Articles L. 511-11 and L. 532-2, shall each pay a special contribution of between 500 euros and 1,500 euros determined by order of the Minister for the Economy **and, for the entities referred to in subparagraph B 4 of paragraph I of Article L. 612-2, by order of the Ministers for the Economy, the Mutual Societies and Social Security;**

2 The brokers and brokerage houses in insurance and reinsurance referred to in Article L. 511-1 of the Insurance Code and intermediaries in banking transactions and payment services, the State-approved non-profit associations and foundations referred to in paragraph 5 of Article L. 511-6 of this code and the legal entities referred to in Article L. 313-21-1 shall each pay a special contribution of between 100 euros and 300 euros determined by order of the Minister for the

Economy. Entities engaged in an insurance and reinsurance broking activity while also acting as an intermediary in banking transactions and payment services or another activity requiring a contribution to be paid to the Autorité de Contrôle Prudentiel shall pay a single contribution.

III. – The amount of the contribution referred to in subparagraphs II A and II B of this article shall be between:

1 0.40 and 0.80% for the entities referred to in subparagraph II A of this article. Said amount is determined by order of the Minister for the Economy;

2 0.06 and 0.18% for the companies referred to in subparagraph II B of this article. Said amount is determined by order of the Ministers for the Economy, the Mutual Societies and Social Security.

The contribution paid under this article cannot be below a minimum contribution, the amount of which, at between 500 euros and 1,500 euros, is determined by order of the Ministers for the Economy, the Mutual Societies and Social Security.

**The orders referred to in paragraph II and in this paragraph III shall be issued after consultation with the Board of the Autorité de Contrôle Prudentiel in plenary session.**

IV. – For the entities referred to in subparagraphs II A and II B of this article, the Autorité de Contrôle Prudentiel shall determine the contribution on the basis of the declarations they have provided in connection with the supervision of the hedge ratios referred to in Articles L. 511-41, L. 522-14 and L. 533-2, the presentation standards for the minimum capital required to comply with Articles L. 511-11 and L. 532-2 of this code and the solvency margin referred to in Article L. 310-12 of the Insurance Code.

V. – The contribution is collected in the following manner:

1 The Autorité de Contrôle Prudentiel sends a request for contributions to all the entities referred to in subparagraphs II A and II C of this article by 15 April of each year. The entities concerned must make the relevant payment to the Banque de France by 30 June of each year. **The institution that maintains the sole register referred to in Article L. 512-1 of the Insurance Code shall send the ACP a list, drawn up as of 1 January of each financial year, of the insurance and reinsurance brokers and brokerage houses referred to in Article L. 511-1 of said code and also of the intermediaries in banking transactions and payment services;**

2 For the entities referred to in subparagraph II B of this article, the Autorité de Contrôle Prudentiel shall issue a notice requesting payment of a provisional deposit of 75% of the contribution due in respect of the previous year by 15 February of each year. Said entities must make said payment to the Banque de France by 31 March of each year. The ACP shall then send them a notice calling for payment of the balance of the contribution due for the year then current by 15 July of each year. Said payment must be made by 30 September of each year;

3 A liable entity wishing to challenge the amount of the tax requested must send a reasoned appeal to the Chairman of the Autorité de Contrôle Prudentiel within sixty days. In the event of its appeal being totally or partially rejected, the liable entity shall receive a reasoned reminder letter. Challenges to such tax assessments are dealt with by the Administrative Court.

VI. – In the event of partial payment or non-compliance with the deadlines for payment referred to in paragraph V of this article, the Autorité de Contrôle Prudentiel shall send the liable entity a reasoned reminder letter by registered mail with confirmation of receipt. Said letter shall inform it that the surcharge referred to in Article 1731 of the Code Général des

Impôts is applicable to the overdue sums. The arrears interest referred to in Article 1727 shall be applied.

The surcharge shall become applicable upon expiry of a period of thirty days commencing on the date of delivery to the liable entity of the reminder letter establishing the additional contribution. The liable entity shall be informed of its right to submit its observations within said timeframe.

VII. – During the three years following the year in respect of which the tax is due, the Autorité de Contrôle Prudentiel may revise the amount of the contribution in accordance with the procedures referred to in paragraph V.

**VIII. – If payment is not effected within thirty days of the date of delivery to the liable entity of the reminder letter establishing the additional contribution or of the registered letter establishing the revised amount of the contribution, the Banque de France shall refer the matter to the Public Accountant, who shall issue an enforceable instrument for collection via the procedures, and subject to the sanctions, guarantees, sureties and preferential rights, that apply to turnover tax.** Appeals shall be lodged, examined and decided according to the rules applicable to said tax. The sums thus recovered shall be transferred to the Banque de France, which shall reallocate them to the budget of the Autorité de Contrôle Prudentiel. The State shall deduct the recovery costs, the rate of which is determined by the regulations and cannot exceed 1% of the sums thus recovered on behalf of the Banque de France.

IX. – All the actions linked to the recovery by the Banque de France of the contribution for the cost of supervision and the payment of the proceeds thereof to the Autorité de Contrôle Prudentiel are the subject of a specific accounting follow-up in the accounts of the Banque de France.

X. – A decree issued following consultation with the Conseil d'Etat determines, where necessary, the implementing provisions of this article.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 12 and 36 Official Journal of 23 October 2010*

## Section 4 Approval of, and changes in, equity interests

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-21. – The Autorité de Contrôle Prudentiel draws up and publishes a list of the entities referred to in paragraph I of Article L. 612-2.

A decree issued following consultation with the Conseil d'Etat determines the implementing provisions of this article.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 36 Official Journal of 23 October 2010 (words deleted)*

Art. L. 612-22. – Where a merger that directly or indirectly concerns an entity subject to the supervision of the Autorité de Contrôle Prudentiel is the subject of a thorough examination pursuant to the last subparagraph of paragraph III of Article L. 430-5 of the Commercial Code, the Autorité de la Concurrence shall, before ruling pursuant to Article L. 430-7 of said code, obtain the opinion of the Autorité de Contrôle Prudentiel. The Autorité de la Concurrence shall, to that end, send the Autorité de Contrôle Prudentiel the details of any case referred to it that relates to such a merger. The Autorité de Contrôle Prudentiel



shall send its opinion to the Autorité de la Concurrence within one month of receiving said request. The opinion of the Autorité de Contrôle Prudentiel shall be made public as provided for in Article L. 430-10 of the Commercial Code.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

## Section 5 Exercise of supervision

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-23. – The Secretary General of the Autorité de Contrôle Prudentiel organises the on-site document inspections.

Implementation of the inspections carried out under the provisions of the Consumer Code by the Autorité de Contrôle Prudentiel is without prejudice to the competence conferred on the staff of the Autorité Administrative Chargée de la Concurrence et de la Consommation (Administrative Authority for Competition and Consumer Protection) under Article L. 141-1 of the Consumer Code.

For said inspections, the Secretary General may have recourse to external auditing bodies, statutory auditors, experts or entities or competent authorities. **In order to contribute to the supervision of the entities referred to in subparagraphs II 1 and II 3 of Article L. 612-2, the Secretary General may enlist the services of a professional body representing the interests of one or more categories of said entities which the entity inspected is a member of.**

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 36 Official Journal of 23 October 2010*

Art. L. 612-24. – The Autorité de Contrôle Prudentiel determines the list, the model, the frequency and the deadlines for transmission of the documents and information that must be submitted to it periodically.

The Secretary General of the Autorité de Contrôle Prudentiel may, moreover, request from the entities subject to its supervision any information or documents on whatever medium and obtain a copy thereof, as well as any clarification or proof required to perform its duties. It may ask said entities to provide it with the statutory auditors' reports and, more generally, with any accounting document and may, where necessary, request certification thereof.

The Autorité de Contrôle Prudentiel shall collect from the entities referred to in subparagraph I B of Article L. 612-2, on behalf of the Institut National de la Statistique et des Études Économiques (INSEE) and of the statistical units of the Ministry of Social Security, the data relating to the additional welfare benefits determined in a decree issued as provided for in the Act of 7 June 1951 on the obligation, the coordination and secrecy with regard to statistics after consultation with the Conseil Supérieur de la Mutualité and the Comité Consultatif de la Législation et de la Réglementation Financières.

The Secretary General of the ACP may summon and hear any entity subject to its supervision or which it needs to hear in order to perform its supervisory duties.

Without prejudice to exercise of the rights pertaining to adversary procedures or to the requirements of jurisdictional procedures, the Secretary General of the ACP shall not be required to disclose to the entities subject to its supervision or to third parties the documents concerning them that it has

produced or received, in particular where such disclosure would compromise business secrets or the professional secrecy the ACP is bound by.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-25. – In the event of a breach of an obligation to make a declaration or to provide statements, documents or data requested by the Secretary General or by one of the ACP's sessions, the Autorité de Contrôle Prudentiel may impose an Injunction along with a coercive fine in respect of which it shall determine the amount and the effective date.

**The coercive fine shall be collected by the Public Accountant and credited to the State budget.**

A decree issued following consultation with the Conseil d'Etat determines the implementing provisions of this article and, inter alia, the maximum daily amount of, and the means of collecting, the coercive fine in the event of total or partial non-compliance or delayed compliance.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

*Amended by Order No. 2010-420 of 27 April 2010 Art. 112 Official Journal of 30 April 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 12 Official Journal of 23 October 2010*

Art. L. 612-26. – The Secretary General of the Autorité de Contrôle Prudentiel may decide to extend the on-the-spot inspection of an entity subject to its supervision to:

1 Its subsidiaries;

2 The legal entities that directly or indirectly control it within the meaning of Article L. 233-3 of the Commercial Code;

3 The subsidiaries of said legal entities;

4 Any other company or legal entity belonging to the same group;

5 The entities and organisations of any kind that have, directly or indirectly, entered into a management agreement or reinsurance agreement with said company or any other kind of agreement likely to affect its operational autonomy, or any decision concerning one of its business areas;

6 Any company which is affiliated to it within the meaning of paragraph 5 of Article L. 334-2 of the Insurance Code;

7 The mutual societies and unions covered by Book III of the Mutuality Code which are linked to it;

8 The supplementary pension management institutions that are linked to it.

The facts gathered during said extension of the inspection may be disclosed by the Secretary General to the entity referred to in the first paragraph of this article, notwithstanding the professional secrecy referred to in Article L. 612-17.

Within the framework of international agreements, on-the-spot inspections may also be extended to the foreign branches or subsidiaries of companies subject to the ACP's supervision.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-27. – Where an on-the-spot inspection is carried out, a report shall be drawn up. The draft report shall be sent to the senior managers of the entity inspected, who may

make their observations known for inclusion in the definitive report.

**In the event of an emergency or another requirement to urgently establish the facts relating to acts or misconduct likely to constitute violations of the provisions applicable to the entities supervised, the ACP's inspectors may draw up reports.**

The results of the on-the-spot inspections shall be sent to the inspected entity's Board of Directors or its Executive Board, and to its Supervisory Board or corresponding deliberative body.

They may also be sent to its statutory auditors and to the specialised real-estate credit company **and housing loan company** inspectors.

They may likewise be sent to the company that controls it within the meaning of paragraph I of Article L. 511-20, and of paragraph 1 of Article L. 334-2 of the Insurance Code, to the central body to which it is affiliated, to the insurance company group or the mutual union to which it is affiliated or to its reference body within the meaning of Articles L. 212-7-1 of the Mutuality Code and L. 933-2 of the Social Security Code.

Said results, and likewise any other information provided to the supervised entities or to the entities referred to in the previous paragraph which includes an assessment of their situation, cannot be provided to third parties, save for the cases which the law provides for, without the consent of the Autorité de Contrôle Prudentiel.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 12 Official Journal of 23 October 2010*

Art. L. 612-28. – Where facts likely to warrant prosecution are uncovered, the Chairman of the Autorité de Contrôle Prudentiel shall inform the local Public Prosecutor thereof, without prejudice to any sanctions that the Autorité de Contrôle Prudentiel may impose.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-29. – Where practices like to warrant prosecution under Articles L. 420-1 and L. 420-2 of the Commercial Code are uncovered, the Chairman of the ACP shall inform the competent competition authorities thereof.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

**Art. L. 612-29-1. – Where, for marketing and customer protection purposes, a professional body representing the interests of one or more categories of entities within the area of competence of the Autorité de Contrôle Prudentiel, or which may be subject to its supervision, draws up conduct of business rules intended to clarify the rules applicable to its members, the ACP shall verify their compatibility with the laws and regulations applicable to them. The association may ask the ACP to approve all or part of the conduct of business rules it has drawn up for marketing and customer protection purposes. Publication of the ACP's approval of said rules makes them applicable to all of said association's members, as determined in the rules or in the approval decision.**

The ACP may formally record the existence of good professional practices or make recommendations that lay down rules of good professional practice with regard to marketing and customer protection.

**The ACP may ask one or more professional bodies representing the interests of one or more categories of entities within its area of competence, or which may be subject to its supervision, to submit proposals to it in this regard.**

The ACP shall publish a collection of all the conduct of business rules, professional rules and other formally recorded or recommended good practices that it verifies compliance with.

**The Minister for the Economy may ask the Autorité de Contrôle Prudentiel to carry out in the entities and domains within its sphere of competence a verification of compliance with the commitments made by one or more professional bodies representing their interests within the framework of the measures proposed by the Comité Consultatif du Secteur Financier. The results of said verification shall be the subject of a report which the ACP shall submit to the Minister and to the Comité Consultatif du Secteur Financier. Said report shall indicate, for each commitment, the portion attributable to the professionals fulfilling it.**

*Inserted by Act No. 2010-1249 of 23 October 2010 Art. 36 Official Journal of 23 October 2010*

## Section 6 Public order administrative measures

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-30. – Where it notes that an entity subject to its supervision has practices likely to jeopardise the interests of its clients, insured parties, members or beneficiaries, the Autorité de Contrôle Prudentiel may, after giving its senior managers an opportunity to present their explanations, issue a warning to it to cease said practices insofar as they breach the good practice rules of the profession concerned.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-31. – The Autorité de Contrôle Prudentiel may order any entity subject to its supervision to take any measures necessary to achieve compliance with the obligations that the Autorité de Contrôle Prudentiel is responsible for supervising, and within a set timeframe.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-32. – The Autorité de Contrôle Prudentiel may require any entity subject to its supervision to submit for its approval a recovery programme covering all the measures needed to restore or strengthen its financial situation, to improve its management methods or to ensure the appropriateness of its organisation for its business or its development objectives.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-33. – Where the solvency or the liquidity of an entity subject to the ACP's supervision or where the interests of its clients, insured parties, members or beneficiaries are, or are likely to be, compromised, the Autorité de Contrôle Prudentiel shall take the necessary protective measures.

It may, to such effect:

1 Place the entity under special supervision;

2 Limit or temporarily prohibit the execution of certain transactions by said entity, including acceptance of premiums or deposits;

3 Suspend, restrict or temporarily prohibit the free disposal of all or some of the supervised entity's assets;

4 Order an entity referred to in subparagraphs B 1, B 3 and B 5 of paragraph I of Article L. 612-2 to suspend or limit the payment of surrender values, the right to execute arbitrage transactions, the payment of advances on contracts or the right to opt out;

5 Order the transfer, without consultation, of all or some of the insurance contracts or settlement portfolios **or of the proposal forms for contracts or settlement portfolios** of the entities referred to in subparagraphs B 1, B 3 and B 5 of paragraph I of Article L. 612-2;

6 Decide to prohibit or limit the distribution of a dividend to the shareholders or a return on the membership shares of said entities;

7 Suspend one or more of the supervised entity's senior managers.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 12 Official Journal of 23 October 2010*

Art. L. 612-34. – I. – The Autorité de Contrôle Prudentiel may appoint a provisional administrator to a legal entity it supervises, to whom all the administrative, managerial and representational powers of said entity shall be transferred. Said provisional administrator shall manage the entity's movable and immovable property with all due diligence.

Said appointment shall be made either at the request of the senior managers where they consider that they are no longer able to perform their duties normally, or at the initiative of the Autorité de Contrôle Prudentiel where the management **of the supervised entity can no longer be performed normally or in the event of one or more of its senior managers being suspended.**

In the case of institutions affiliated to a central body, said body may ask the Autorité de Contrôle Prudentiel to appoint a provisional administrator to the institutions affiliated to it.

II. – Where the situation gives rise to fears that an institution or a company covered by the deposit guarantee fund may eventually be unable to pay the remuneration of the provisional administrator, the deposit guarantee fund may, on a proposal from the Autorité de Contrôle Prudentiel, decide to guarantee said payment in proportion, where applicable, to the different mechanisms implemented.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 12 Official Journal of 23 October 2010*

Art. L. 612-35. – The Autorité de Contrôle Prudentiel shall decide the measures referred to in the Articles of this section upon conclusion of inter partes proceedings.

Where particularly urgent circumstances so warrant, the Autorité de Contrôle Prudentiel may provisionally order protective measures referred to in Articles L. 612-33 and L. 612-34 without inter partes proceedings. Inter partes proceedings shall then be immediately instituted in order to lift, adapt or confirm said emergency protective measures.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-36. – The decisions of the Board relating to a supervised entity taken pursuant to this section may be made known to the company that controls it within the meaning of paragraph I of Article L. 511-20, of 1 of Article L. 334-2 of the Insurance Code, to the central body to which it is affiliated, to the insurance company group or the mutual union to which it is affiliated or to its reference body within the meaning of Articles L. 212-7-1 of the Mutuality Code and L. 933-2 of the Social Security Code.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-37. – A decree issued following consultation with the Conseil d'Etat determines the implementing provisions of this section.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

## Section 7 Disciplinary power

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

### Subsection 1 Disciplinary proceedings

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-38. – (Where one of the sessions of the Board decides to open disciplinary proceedings, its Chairman shall notify the complaints to the entities concerned. It shall send the notice of complaints to the Enforcement Commission.) **[One of the sessions of the Board shall examine the conclusions reached, within the framework of the Autorité de Contrôle Prudentiel's supervisory duties, by the ACP's units or the report drawn up pursuant to Article L. 612-27. If it decides to initiate disciplinary proceedings, its Chairman shall inform the individuals concerned of the complaints. It shall send the notice of complaints to the Enforcement Commission which shall designate a rapporteur from among its members.]**

The Enforcement Commission shall ensure that the inter partes nature of the procedure is respected. It shall send information and convening notices to any individual or entity referred to in the notice of complaints. Any individual summoned shall have the right to be assisted or represented by the advisor of his choice. The Enforcement Commission shall make use of the ACP's units for the conduct of the procedure.

The member of the Board designated by the session that decided to open disciplinary proceedings shall be summoned to the hearing. He shall attend without voting rights. He may be assisted or represented by the ACP's units. He may make observations in support of the complaints notified and may propose a sanction.

The Enforcement Commission may hear any member of the ACP's units.

A challenge to a member of the Enforcement Commission may be made at the request of an alleged perpetrator where there are good grounds for questioning the impartiality of said member.

(The Enforcement Commission may sit only if the majority of its members are present. It deliberates without the presence of the parties, the Government representative, the member of the Board and of the ACP's units tasked with assisting the latter or representing it.) [The Enforcement Commission may sit only if the majority of its members are present. It deliberates without the presence of the parties, **the rapporteur, the Director General of the Treasury or the Social Security Director or their representatives**, the member of the Board and of the ACP's units tasked with assisting the latter or representing it. **It hands down a reasoned decision.**]

The provisions of Article L. 612-36 shall apply to the decisions of the Enforcement Commission.

Where it imposes a disciplinary sanction on an investment service provider with regard to its prudential obligations, the Autorité de Contrôle Prudentiel shall inform the Autorité des Marchés Financiers thereof.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 15 Official Journal of 23 October 2010 effective 23 January 2011*

#### Subsection 2 List of sanctions

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-39. – If an entity referred to in paragraph I of Article L. 612-2, with the exception of those referred to in subparagraphs A 4, A 5 and B 4, has violated a legislative or regulatory provision that the ACP is responsible for monitoring or the approved conduct of business rules applicable to its profession, and has not submitted the recovery programme requested to the ACP, has not heeded a warning, has not responded to a formal demand or has not complied with the special conditions laid down or the commitments made at the time of application for approval, authorisation or an exception envisaged in the relevant laws or regulations, the Enforcement Commission may impose one or more of the following disciplinary sanctions, commensurate with the seriousness of the violation:

1. A warning;
2. A reprimand;
3. A prohibition on the execution of certain transactions and any other restriction on the conducting of its business;
4. The temporary suspension of one or more senior managers or, in the case of a payment institution engaged in hybrid activities, of the individuals declared responsible for the management of the payment service activities, with or without the appointment of a provisional administrator;
5. The dismissal without consultation of one or more senior managers or, in the case of a payment institution engaged in hybrid activities, of the individuals declared responsible for the management of the payment service activities, with or without the appointment of a provisional administrator;
6. A partial withdrawal of approval;
7. Complete withdrawal of approval or delisting of the approved individuals, with or without the appointment of a liquidator.

The duration of the sanctions referred to in paragraphs 3 and 4 cannot exceed ten years.

Where the disciplinary proceedings instituted may lead to the imposition of sanctions on senior managers, the ACP's session which decided to initiate the procedure shall expressly

indicate, in the notice of complaints, that the sanctions referred to in paragraphs 4 and 5 are likely to be imposed on the senior managers that it names, identifying the elements likely to establish their direct and personal responsibility for the breaches or infractions in question, and the Enforcement Commission shall ensure that the inter partes nature of the procedure is respected in regard to them.

The Enforcement Commission may impose, either instead of, or in addition to, said sanctions, a fine of not more than **one hundred million euros**.

The Enforcement Commission may join a coercive fine to the sanction, in respect of which it shall determine the amount and the effective date. A decree issued following consultation with the Conseil d'Etat determines the procedure applicable, the maximum daily amount of the coercive fine and the manner in which said fine shall be collected in the event of total or partial non-compliance or delayed compliance.

The Enforcement Commission may also impose the sanctions referred to in this Article if the injunctions referred to in Articles L. 511-41-3 and L. 522-15-1 and the additional requirements referred to in the second paragraph of Article L. 334-1 of the Insurance Code, **the first paragraph of Article L. 510-1-1 of the Mutuality Code or the first paragraph of Article L. 931-18 of the Social Security Code** have not been complied with.

**The Enforcement Commission's decision shall be made public in the publications, journals or media that it indicates, in a format commensurate with the offence committed and the sanction imposed. The cost thereof shall be borne by the entities penalised. However, where its publication could seriously disrupt the financial markets or cause undue damage to the parties involved, the Commission may decide not to publish the decision.**

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 12 and 16 Official Journal of 23 October 2010*

Art. L. 612-40. – If it appears that a financial holding company or a mixed financial holding company is in breach of the laws and regulations applicable to its business, the Enforcement Commission may impose on it, commensurate with the **seriousness** of the breach, a warning, a reprimand, the temporary suspension of one or more senior managers, with or without the appointment of a provisional administrator, or the dismissal without consultation of one or more senior managers, with or without the appointment of a provisional administrator.

Where the disciplinary proceedings instituted may lead to the suspension or dismissal without consultation of senior managers, the ACP's session which decided to initiate the procedure shall expressly indicate this in the notice of complaints, identifying the elements likely to establish their direct and personal responsibility for the breaches or infractions in question, and the Enforcement Commission shall ensure that the inter partes nature of the procedure is respected in regard to them.

The Enforcement Commission may impose, either instead of, or in addition to, said sanctions, a fine of not more than **one hundred million euros**.

The Enforcement Commission may join a coercive fine to the sanction, in respect of which it shall determine the amount and the effective date. A decree issued following consultation with the Conseil d'Etat determines the procedure applicable, the maximum daily amount of the coercive fine and the manner in which said fine shall be collected in the event of total or partial non-compliance or delayed compliance.



**The Enforcement Commission's decision shall be made public in the publications, journals or media that it indicates, in a format commensurate with the offence committed and the sanction imposed. The cost thereof shall be borne by the entities penalised. However, where its publication could seriously disrupt the financial markets or cause undue damage to the parties involved, the Commission may decide not to publish the decision.**

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 16 Official Journal of 23 October 2010*

Art. L. 612-41. – I. – If an entity referred to in subparagraph B 4 of paragraphs I or II of Article L. 612-2 has violated a legislative or regulatory provision of the Insurance Code or of the Monetary and Financial Code which is applicable to it, the Enforcement Commission may impose on it or, where appropriate, on its senior managers, partners or third parties empowered to manage or administer it, one or more of the following disciplinary sanctions, commensurate with the seriousness of the violation:

1. A warning;
2. A reprimand;
3. A prohibition on the execution of certain intermediation transactions and any other restriction on the conducting of its business;
- 4 The temporary suspension of one or more senior managers of the entity carrying on an intermediation business;
- 5 The dismissal without consultation of one or more senior managers of the entity carrying on an intermediation business;
- 6 Delisting from the register referred to in Article L. 512-1 of the Insurance Code;
- 7 A prohibition on carrying on an intermediation business.

The duration of the sanctions referred to in paragraphs 3, 4 and 7 cannot exceed ten years.

Where the disciplinary proceedings instituted may lead to the imposition of sanctions on senior managers, the ACP's session which decided to initiate the procedure shall expressly indicate this in the notice of complaints, identifying the elements likely to establish their direct and personal responsibility for the breaches or infractions in question, and the Enforcement Commission shall ensure that the inter partes nature of the procedure is respected in regard to them.

The Enforcement Commission may impose, either instead of, or in addition to, said sanctions, a fine of not more than one hundred million euros.

The Enforcement Commission may join a coercive fine to the sanction, in respect of which it shall determine the amount and the effective date. A decree issued following consultation with the Conseil d'Etat determines the procedure applicable, the maximum daily amount of the coercive fine and the manner in which said fine shall be collected in the event of total or partial non-compliance or delayed compliance.

**The Enforcement Commission's decision shall be made public in the publications, journals or media that it indicates, in a format commensurate with the offence committed and the sanction imposed. The cost thereof shall be borne by the entities penalised. However, where its publication could seriously disrupt the financial markets or cause undue damage to the parties involved, the Commission may decide not to publish the decision.**

II. – If a money changer has violated a provision of this code which is applicable to it, the Enforcement Commission may impose one of the following disciplinary sanctions, commensurate with the seriousness of the violation:

1. A warning;
2. A reprimand;
- 3 Removal from the list referred to in Article L. 612-21.

It may impose, either instead of, or in addition to, said sanctions, a fine commensurate with the seriousness of the breach which shall not exceed **one hundred million euros**.

The Enforcement Commission may prohibit the money changers' de facto or de jure senior managers from directly or indirectly practising the profession of money changer for a maximum period of ten years. Where the money changer is a legal entity, the Enforcement Commission may decide that its de facto or de jure senior managers are jointly and severally liable to pay the fine imposed. Where the disciplinary proceedings instituted may lead to the application of sanctions to senior managers, the ACP's session which decided to initiate the procedure shall expressly indicate this in the notice of complaints, identifying the elements likely to establish their direct and personal responsibility for the breaches or infractions in question, and the Enforcement Commission shall ensure that the inter partes nature of the procedure is respected in regard to them.

The Enforcement Commission may join a coercive fine to the sanction, in respect of which it shall determine the amount and the effective date. A decree issued following consultation with the Conseil d'Etat determines the procedure applicable, the maximum daily amount of the coercive fine and the manner in which said fine shall be collected in the event of total or partial non-compliance or delayed compliance.

**The Enforcement Commission's decision shall be made public in the publications, journals or media that it indicates, in a format commensurate with the offence committed and the sanction imposed. The cost thereof shall be borne by the entities sanctioned. However, where its publication could seriously disrupt the financial markets or cause undue damage to the parties involved, the Commission may decide not to publish the decision.**

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 16 Official Journal of 23 October 2010*

Art. L. 612-42. – I. – The amounts of the sanctions and coercive fines referred to Articles L. 612-39 to L. 612-41 shall be collected by the Trésor Public and credited to the State budget.

II. – A decree issued following consultation with the Conseil d'Etat determines the implementing provisions of this section.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

## Section 8 Relations with statutory auditors

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-43. – The Autorité de Contrôle Prudentiel shall be consulted concerning any proposal to appoint or reappoint the statutory auditors of the entities subject to its supervision, save for **the entities referred to in subparagraphs A 6 and A**

**7 of paragraph I of Article L. 612-2**, money changers, payment institutions engaged in hybrid activities, companies belonging to a mixed insurance group and the entities referred to in paragraphs II and III of Article L. 612-2, under conditions determined by decree.

Where the situation so warrants, the ACP may also appoint an additional statutory auditor.

The provisions of the above paragraph shall not apply to the companies referred to in subparagraph 1 of paragraph III of Article L. 310-1-1 of the Insurance Code, the mutual societies and unions referred to in paragraph I of Article L. 211-7-2 of the Mutuality Code or to the provident institutions and unions of provident institutions referred to in paragraph I of Article L. 931-4-1 of the Social Security Code.

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 12 Official Journal of 23 October 2010*

Art. L. 612-44. – I. – The Autorité de Contrôle Prudentiel may ask the statutory auditors of the entities subject to its supervision for any information on the activities and financial situation of the entity they audit and on the techniques applied to it in the performance of their assignment.

The Autorité de Contrôle Prudentiel may also send the statutory auditors of the entities referred to in the previous paragraph, those of undertakings for collective investment in transferable securities and those of the management companies referred to in Article L. 214-25, the information they need to perform their assignment.

The information thus provided is covered by the professional secrecy rule.

The Autorité de Contrôle Prudentiel may also send written observations to the statutory auditors, who shall then be required to provide written answers.

**The first paragraph shall apply to the specialised real-estate credit company and housing loan company inspectors.**

II. – Statutory auditors are required to inform the Autorité de Contrôle Prudentiel as soon as possible of any fact or decision concerning the entity subject to its supervision which they have become aware of in the performance of their duties and which could:

1. Constitute a breach of the laws or regulations applicable to them and have a significant impact on their financial situation, profits or assets;

2 Jeopardise its continued exploitation;

3. Give rise to the issuing of reservations or to a refusal to certify its accounts.

The same obligation shall apply to the aforementioned facts and decisions which the statutory auditors may become aware of in the performance of their duties relating to a parent company or a subsidiary of the supervised entity or in a sub-entity of a mutual society, a union or a federation or in an entity covered by Article L. 212-7 of the Mutuality Code.

Where the statutory auditors perform their duties in a credit institution affiliated to one of the central bodies referred to in Article L. 511-30, the facts and decisions referred to in the previous paragraphs shall be made known to said central body at the same time.

III. – For the purposes of this section, statutory auditors are released from professional secrecy in relation to the Autorité de Contrôle Prudentiel and, where applicable, to the central bodies referred to in Article L. 511-30; they shall not incur liability in

respect of the information or facts they disclose in performance of the obligations resulting from these provisions.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 12 Official Journal of 23 October 2010*

Art. L. 612-45. – Where it has knowledge of a violation or breach of the laws or regulations applicable to statutory auditors committed by a statutory auditor of an entity subject to its supervision, the Autorité de Contrôle Prudentiel may ask the competent court to relieve him of his duties as provided for in Article L. 823-7 of the Commercial Code.

The Autorité de Contrôle Prudentiel may also report said violation or breach to the competent State Prosecutor's Office with a view to initiating disciplinary proceedings. For said purpose, it may provide him with all the information it deems necessary to ensure that he is duly informed.

It may communicate any information it deems necessary to the High Council of the Order of Statutory Auditors to ensure that it is duly informed.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

## Section 9 Cooperation

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

### Subsection 1 Cooperation with guarantee funds

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-46. – The guarantee funds referred to in Articles L. 312-4, L. 313-50 and L. 322-2 of this code, L. 421-1 and L. 423-1 of the Insurance Code, L. 431-1 of the Mutuality Code and L. 931-35 of the Social Security Code shall be consulted by the Autorité de Contrôle Prudentiel regarding the applications for approval received from entities coming within their scope.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

### Subsection 2 Coordination with regard to supervision of the relations between the member professions and their clients

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-47. – The Autorité de Contrôle Prudentiel and the Autorité des Marchés Financiers have instituted a Joint Unit tasked, under their responsibility, with:

1 Coordinating the proposals for supervision priority drawn up by the two authorities with regard to compliance by the entities subject to their supervision with the obligations they have towards their clients in relation to banking or insurance transactions and investment or payment services and any other savings products they offer;

2 Analysing the results of the supervisory activities of the two authorities with regard to compliance with the obligations the professionals have towards their clients and proposing to

the Secretaries General the conclusions to be drawn consistent with the respective areas of competence of each authority;

3 Coordinating the supervision of all the transactions and services referred to in paragraph 1 in order to identify the risk factors, as well as the monitoring of the advertising campaigns relating to said products;

4 Offering a common point of entry authorised to receive any requests that clients, insured parties, beneficiaries, assigns or savers may send to the Autorité de Contrôle Prudentiel or to the Autorité des Marchés Financiers.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-48. – I. – The Joint Unit's coordinator is appointed jointly by the Secretaries General of the Autorité de Contrôle Prudentiel and of the Autorité des Marchés Financiers. Under their joint authority, he is responsible for the implementation of the tasks referred to in Article L. 612-47.

II. – Said authorities shall make available to the coordinator and to the individuals working on the tasks that constitute the Joint Unit's coordination objective all of the information, including personal information, that they require to perform their tasks. Said exchanges of information are protected by professional secrecy.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-49. – The Joint Unit's operational procedures are set forth in an agreement drawn up by the Autorité de Contrôle Prudentiel and the Autorité des Marchés Financiers.

They have determined by agreement with the Banque de France the circumstances in which they may have recourse to its units in connection with their duty to monitor the relations between the professions they supervise and their clients.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

Art. L. 612-50. – The Autorité de Contrôle Prudentiel and the Autorité des Marchés Financiers shall jointly draw up a report on the activities of their Joint Unit each year.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 1 Official Journal of 22 January 2010*

## Chapter III Provisions specific to credit institutions, investment firms and payment institutions

*Heading amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

### Section 1 Supervision on a consolidated basis

*Heading amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

Art. L. 613-20-1. – The Autorité de Contrôle Prudentiel performs consolidated supervision for a group within the meaning of Articles L. 511-41-2 and L. 533-4-1 where the parent company of said group in the European Community or the European Economic Area is a credit institution or an

investment firm subject to its supervision. Where the parent company is a financial holding company or a mixed financial holding company within the meaning, respectively, of Articles L. 517-1 and L. 517-4, the Autorité de Contrôle Prudentiel performs consolidated supervision if said company meets criteria laid down by order of the Minister for the Economy.

Where the Autorité de Contrôle Prudentiel is responsible for performing the supervision of a group pursuant to the first paragraph of this article, it performs its supervision with regard to the entities supervised on a consolidated basis throughout the European Economic Area. It therefore organises, in particular:

1. Coordination of the collection and dissemination of useful information both in the normal course of business and in emergency situations;

2. Planning and coordination of the prudential supervision activities, in cooperation with the competent authorities concerned, **including the central banks, both in the normal course of business and in emergency situations.**

*Inserted by Order No. 2007-571 of 19 April 2007 Art. 5 Official Journal of 20 April 2007*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 19 Official Journal of 23 October 2010*

Art. L. 613-20-2. – **In order to facilitate the supervision of groups on a consolidated basis, the Autorité de Contrôle Prudentiel creates boards of supervisors composed of the competent authorities of the Member States of the European Union or of other States party to the European Economic Area Agreement.**

The Autorité de Contrôle Prudentiel chairs the meetings of said boards. It ensures appropriate coordination with the competent authorities of the States that are not party to the Economic Area Agreement. It decides which competent authorities should attend each meeting of the board.

The constitution and the operations of the boards are based on written agreements entered into by the Autorité de Contrôle Prudentiel with the competent authorities concerned. The boards enable the Autorité de Contrôle Prudentiel and the other competent authorities concerned to:

- exchange information;
- agree to entrust tasks to each other and to delegate competence, voluntarily, where necessary;
- plan and coordinate the prudential supervision activities on the basis of an assessment of the group's risks;
- coordinate the collection of information;
- apply the prudential requirements in a cohesive manner throughout the entities within the group;
- take account of the prudential supervision activities prescribed for emergencies.

*Inserted by Order No. 2007-571 of 19 April 2007 Art. 5 Official Journal of 20 April 2007*

*Replaced by Act No. 2010-1249 of 22 October 2010 Art. 20 Official Journal of 23 October 2010*

Art. L. 613-20-3. – The provisions of Chapter II of Part III of this book, inter alia those of Articles L. 632-1, L. 632-3, L. 632-5 and L. 632-12, shall apply to the exercise of competence and to the agreements referred to in this section.

*Inserted by Order No. 2007-571 of 19 April 2007 Art. 5 Official Journal of 20 April 2007*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

Art. L. 613-20-4. – Where, as the authority responsible for supervision on a consolidated basis, the Autorité de Contrôle Prudentiel receives a request for authorisation relating to the use of an internal approach to risk assessment as envisaged in Article L. 511-41 on behalf of several credit institutions or investment firms belonging to the same group and established in at least two Member States of the European Community or party to the European Economic Area Agreement, it shall confer with the authorities concerned with a view to arriving at a decision that would form the basis of an agreement between them. Should they fail to reach agreement, it shall make a decision and convey it to the authorities concerned.

**The Autorité de Contrôle Prudentiel, as the authority responsible for supervision on a consolidated basis, and the competent authorities of other Member States of the European Union or of other States party to the European Economic Area Agreement shall confer with a view to reaching a joint decision on the equity capital requirement for each entity within the banking group on a consolidated basis within the meaning of the second paragraph of Article L. 511-41-3. Should they fail to reach an agreement, the Autorité de Contrôle Prudentiel shall consult the committee composed of the competent supervisory authorities of the Member States of the European Union at the request of any competent authority or on its own initiative. If they are still unable to reach an agreement, the Autorité de Contrôle Prudentiel, as the authority responsible for supervision on a consolidated basis, shall determine the appropriate level of the consolidated equity capital held by the group relative to its financial situation and its risk profile, pursuant to the second paragraph of Article L. 511-41-3.**

Where an authority of another Member State of the European Community or party to the European Economic Area Agreement consults the Autorité de Contrôle Prudentiel on a request for authorisation relating to the use of an internal approach to risk assessment in respect of which it is the authority responsible for supervision on a consolidated basis, the Autorité de Contrôle Prudentiel shall cooperate with a view to arriving at a decision it could agree with. In the event of said authority, after failing to secure such agreement, deciding the request alone, the decision taken by it shall apply in France as soon as the Autorité de Contrôle Prudentiel is informed thereof.

*Inserted by Order No. 2007-571 of 19 April 2007 Art. 5 Official Journal of 20 April 2007*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Arts. 20 and 21 Official Journal of 23 October 2010*

**Art. L. 613-20-6. – A decree issued following consultation with the Conseil d'Etat determines the implementing provisions of this section.**

*Inserted by Act No. 2010-1249 of 22 October 2010 Art. 21 Official Journal of 23 October 2010*

**Art. L. 613-20-5. – Where this is made necessary by an emergency situation, inter alia a development or event likely to undermine the liquidity of a market or the stability of the financial system of another Member State of the European Union or of another State party to the European Economic Area Agreement, the Autorité de Contrôle Prudentiel shall inform the competent authorities of said States as soon as possible and shall provide them with all**

**the information they need to perform their duties, pursuant to the rules laid down in Articles L. 631-1 and L. 632-1 to L. 632-4.**

*Inserted by Act No. 2010-1249 of 22 October 2010 Art. 19 Official Journal of 23 October 2010*

## **Section 2 Provisions relating to the treatment of credit institutions, payment institutions and investment firms in difficulty**

*Heading amended by Order No. 2009-866 of 15 July 2009 Art. 15 Official Journal of 16 July 2009*

*Numbering changed by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

### **Subsection 1 Measures specific to court-ordered recovery, reorganisation and liquidation plans for credit institutions and investment firms**

*Subsection title created by Order No. 2004-1127 of 21 October 2004 Official Journal No. 247 of 22 October 2004*

Art. L. 613-24. – Where a credit institution, a payment institution or one of the entities referred to in subparagraph A 2 of paragraph I of Article L. 612-2 has been delisted or where a firm illegally carries on the activity described in Article L. 311-1, paragraph II of Article L. 314-1 and in Article L. 511-1 or breaches a prohibition referred to in Article L. 511-5 or Article L. 521-2, the Autorité de Contrôle Prudentiel may, **in the circumstances envisaged in Article L. 612-35**, appoint a liquidator to whom all of the legal entity's administrative, management and representation powers shall be transferred.

Where the situation gives rise to fears that the credit institution or an entity referred to subparagraph A 2 of paragraph I of Article L. 612-2 may eventually be unable to pay the remuneration of the liquidator, the deposit guarantee fund may, under the terms and conditions set forth in Article L. 612-34, decide to guarantee said payment.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 12 Official Journal of 23 October 2010*

Art. L. 613-25. – Where a provisional administrator or a liquidator has been appointed to a credit institution pursuant to Articles L. 612-34 and L. 613-24, the Autorité de Contrôle Prudentiel may, having obtained the opinion of the guarantee fund pursuant to Article L. 312-5, refer the matter to the Regional Court (Tribunal de Grande Instance) so that it may, where it considers that the depositors' interests warrant this, order the sale of the shares held by one or more of said institution's de facto and de jure senior managers, salaried or otherwise. The selling price shall be determined on the basis of a court-ordered appraisal. The shares shall be valued in accordance with the methods used for a sale of assets, applying the appropriate weightings to each case, consistent with the value of the assets, the profits realised, the existence of any subsidiaries and the commercial prospects, and, for companies whose securities are admitted to trading on a regulated market, the market value. The action shall be initiated through a payment order served on the shareholders concerned. The competent Regional Court shall be the one having jurisdiction at the place where the credit institution's registered office is located.

In the same circumstances, the Regional Court may decide that the voting right attached to shares or voting right certificates held by one or more de facto or de jure senior



manager(s), salaried or otherwise, shall be exercised, for a period which it shall determine, by a court officer designated for said purpose.

In the same circumstances, the Regional Court may also order the sale of all of the entity's shares, or of the shares and membership shares which were not sold pursuant to the provisions of the first paragraph of this article. Where the shares are admitted to trading on a regulated market, the terms of the sale shall be determined by the General Regulation of the Autorité des Marchés Financiers.

The amount of the compensation due to unidentified holders shall be recorded.

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

Art. L. 613-26. – As an exception to the provisions of Article L. 631-1 of the Commercial Code, credit institutions which are unable to meet their current liabilities, immediately or in the near future, shall be deemed insolvent.

Court-ordered liquidation proceedings may be instituted against credit institutions which have been delisted by order of the Autorité de Contrôle Prudentiel if their liabilities towards third parties, excluding debts which are redeemable only after the unsecured creditors have been fully paid off, are effectively greater than the assets less the mandatory provisions.

*Amended by Act No. 2005-845 of 26 July 2005 Art. 172 Official Journal of 27 July 2005*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Art. L. 613-27. - The court-ordered recovery, reorganisation or liquidation proceedings introduced by Book VI of the Commercial Code may be instituted against a credit institution, a payment institution or an investment firm only after the opinion of the Autorité de Contrôle Prudentiel has been sought.

An application to the court seeking to commence a conciliation procedure introduced by Book VI of the Commercial Code against a credit institution, a payment institution or an investment firm may be made only after the opinion of the Autorité de Contrôle Prudentiel has been sought.

A decree issued following consultation with the Conseil d'Etat determines the form in which the opinions referred to in the first and second paragraphs above shall be given.

*Amended by Act No. 2005-845 of 26 July 2005 Art. 165 Official Journal of 27 July 2005*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 15 Official Journal of 16 July 2009*

Art. L. 613-28. – Where a provisional administrator has been appointed by the Autorité de Contrôle Prudentiel pursuant to Article L. 612-34, the court may entrust the receiver with the supervision of the management tasks referred to in Article L. 622-1 of the Commercial Code only.

*Amended by Act No. 2005-845 of 26 July 2005 Official Journal Appendix of 27 July 2005*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

Art. L. 613-29. – In the event of court-ordered liquidation proceedings being instituted or ordered in relation to a credit institution, a payment institution or an investment firm, the Autorité de Contrôle Prudentiel shall appoint a liquidator who shall draw up an inventory of the assets and proceed with the

liquidation transactions and the redundancies under the terms and conditions laid down in Part IV of Book VI of the Commercial Code.

Pursuant to Articles L. 641-9 or L. 622-5 of the Commercial Code, the court-appointed liquidator shall perform the tasks respectively indicated in the first three paragraphs of Article L. 641-4 or in Article L. 622-5 of said code, with the exception of the inventory of the company's assets and the liquidation transactions.

*Amended by Act No. 2005-845 of 26 July 2005 Art. 173 III and Official Journal Appendix of 27 July 2005*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 15 Official Journal of 16 July 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Art. L. 613-30. – In the event of a court-ordered recovery, reorganisation or liquidation procedure being instituted in relation to a credit institution or an investment firm, the guarantee fund shall be exempted from making the declaration referred to in Article L. 622-24 of the Commercial Code, as shall the depositors in respect of their debts which come wholly or partly within the scope of the fund.

The fund shall inform the depositors of the amount of the debts excluded from the scope of the fund and shall specify the arrangements for declaring said debts to the court-appointed liquidator.

The court-appointed liquidator shall draw up the statements of all the debts. Said statements must be duly noted by the official receiver, filed with the Commercial Court registry and made public. In the event of them being challenged, the claimant must bring the matter before the court within two months of them being made public, under pain of extinction.

A decree issued following consultation with the Conseil d'Etat determines the implementing provisions of this article.

*Amended by Act No. 2005-845 of 26 July 2005 Art. 165 and Official Journal Appendix of 27 July 2005*

Art. L. 613-30-1. – The commencement of a court-ordered recovery, reorganisation or liquidation procedure as well as any enforcement procedure and any equivalent court-ordered procedure instituted against a payment institution on the basis of a foreign legal system shall not affect the funds received from the users of payment services that are deposited or invested in financial instruments held in accounts specifically opened for that purpose as provided for in Article L. 522-17.

Where a court-ordered recovery, reorganisation or liquidation procedure is commenced against a payment institution, the court-appointed administrator or the liquidator, together with the provisional administrator or the liquidator appointed, where applicable, by the Autorité de Contrôle Prudentiel, shall verify that the funds received from the users of payment services that are deposited or invested in financial instruments held in accounts specifically opened for that purpose as provided for in Article L. 522-17 are sufficient to enable the payment institution to meet its obligations towards its users. In the event of said funds proving to be insufficient, a proportional distribution of the funds deposited shall be made to said users. Said funds shall be returned to the users who are exempted from the declaration referred to in Article L. 622-24 of the Commercial Code.

Said users shall be exempted from making the declaration referred to in Article L. 622-24 of the Commercial Code in respect of the portion of the funds which could not be returned to them on account of the insufficiency noted.

The official receiver shall be informed of the result of the verification carried out by the court-appointed administrator or the liquidator and, where applicable, of the proportional distribution of the funds.

A decree issued following consultation with the Conseil d'Etat determines the implementing provisions of this article.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 15 Official Journal of 16 July 2009*

Art. L. 613-31. – The provisions relating to the court-ordered recovery, reorganisation or liquidation of the credit institutions and investment firms referred to in Articles L. 613-25 to L. 613-30 and L. 211-10 shall not apply to court-ordered proceedings instituted before 29 June 1999.

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 79 Official Journal of 7 May 2005*

*Amended by Act No. 2005-845 of 26 July 2005 Art. 165 Official Journal of 27 July 2005*

*Amended by Order No. 2009-15 of 8 January 2009 Art. 5 Official Journal of 9 January 2009*

## Subsection 2 Measures to reorganise and liquidate Community credit institutions

*Subsection created by Order No. 2004-1127 of 21 October 2004 Official Journal No. 247 of 22 October 2004*

Art. L. 613-31-1. – This subsection applies to the reorganisation measures and liquidation procedures for credit institutions and their branches established in a Member State of the European Community other than the State in which their registered office is located. The States party to the European Economic Area Agreement shall be treated as Member States of the European Community.

It shall also apply to the branches of a credit institution having its registered office outside the European Economic Area, provided that it has branches established in at least two Member States.

*(Inserted by Order No. 2004-1127 of 247 October 2004 Art. 111 Official Journal of 22 October 2004)*

Art. L. 613-31-2. - I. - The reorganisation measures referred to in this subsection are the measures taken in France or in any other Member State by the administrative or judicial authorities for the purpose of maintaining or re-establishing the financial situation of a credit institution and which affect the pre-existing rights of third parties.

Where they are taken in France and affect said rights, said measures are:

1 The measures referred to in subparagraph 2 of paragraph I of Article L. 612-33 or in paragraph 3 of Article L. 612-39;

3 The court-ordered recovery or reorganisation procedure referred to in Book VI of the Commercial Code.

II. - The liquidation measures referred to in this subsection are the collective procedures initiated and monitored by the administrative or judicial authorities in France or in any other Member State to realise the assets under the supervision of said authorities.

Where they are taken in France, said measures are those covered by Part IV of Book VI of the Commercial Code.

*Inserted by Order No. 2004-1127 of 21 October 2004 Official Journal No. 247 of 22 October 2004*

*Amended by Act No. 2005-845 of 26 July 2005 Art. 165 and 174 I Official Journal of 27 July 2005*

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

Art. L. 613-31-3. – Without prejudice to the provisions of Articles L. 613-31-5 and L. 613-31-6:

1 The reorganisation and liquidation measures decided by the competent authorities of a Member State other than France in relation to a credit institution having its registered office in said State shall retain all their effects in Metropolitan France and the overseas *départements* and also in Saint-Barthélemy and Saint Martin without any other formality, including effects relative to third parties, as soon as they become effective in said State. The same shall apply where such measures are taken in relation to a branch of a credit institution having its registered office outside the European Economic Area;

2 Where they are taken by the competent French public authority in relation to a credit institution registered in France or a branch in France of an entity having its registered office outside the European Economic Area, said measures shall retain all their effects in the other Member States, including effects relative to third parties located in other Member States.

*Inserted by Order No. 2004-1127 of 21 October 2004 Official Journal No. 247 of 22 October 2004*

*Amended by Order No. 2008-698 of 11 July 2008 Art. 1 Official Journal of 16 July 2008*

Art. L. 613-31-4. – The initiation of court-ordered liquidation proceedings against a credit institution shall entail its delisting as a credit institution.

*Inserted by Order No. 2004-1127 of 21 October 2004 Official Journal No. 247 of 22 October 2004*

Art. L. 613-31-5. – As an exception to the provisions of Article L. 613-31-3, the effects of a reorganisation measure or a liquidation procedure within the meaning of Article L. 613-31-2 on the contracts, rights and proceedings enumerated below shall be determined by the following rules:

1 Employment contracts and working relationships shall be governed exclusively by the law of the Member State applicable to said contract or said relationship;

2 Contracts giving entitlement to acquire or to enjoy real estate shall be governed exclusively by the law of the Member State on whose soil said property is located. The same law shall also determine whether said property is movable or immovable;

3 Rights over real estate, a vessel or an aircraft which is subject to registration in a public register shall be governed exclusively by the law of the Member State under whose authority said register is maintained;

4 Clearing agreements, agreements relating to a temporary assignment of financial instruments and those governing transactions carried out within the framework of a regulated market shall remain exclusively governed by the law applicable to said agreements;

5 Rights over financial instruments which require an entry in a register, an account or a centralised depositary system maintained or located in a Member State shall be governed exclusively by the law of said Member State

6 Proceedings pending on the commencement date of the reorganisation measure or the liquidation procedure relating to a property or a right which the credit institution has been compelled to relinquish shall be governed exclusively by the

law of the Member State in which said proceedings are taking place.

*Inserted by Order No. 2004-1127 of 21 October 2004 Official Journal No. 247 of 22 October 2004*

Art. L. 613-31-6. I. - As an exception to the provisions of Article L. 613-31-3, the decision to adopt a reorganisation measure or to initiate a liquidation procedure shall not affect:

1 The rights in rem, within the meaning of the applicable law, of a creditor or of a third party over tangible or intangible assets, whether movable or immovable, belonging to the credit institution and which are located in another Member State on the date of the decision;

2 The vendor's rights founded on a reservation of title, where the asset was in another Member State on the date of the decision;

3 The buyer's right to acquire an asset sold by the credit institution, where the asset was in another Member State on the date of the decision and on the date of delivery;

4 A creditor's right to call for offsetting of his debt against that of the credit institution, where the law applicable to the credit institution's debt so permits.

II. - The foregoing provisions shall not obstruct actions for nullity, actions to set aside or actions for unenforceability of deeds that are prejudicial to the creditors collectively where such actions are permitted by the law of the Member State in which the credit institution's registered office is located.

*Inserted by Order No. 2004-1127 of 21 October 2004 Official Journal No. 247 of 22 October 2004*

Art. L. 613-31-7. - As an exception to the provisions of Article L. 613-31-3 and of paragraph II of Article L. 613-31-6, the provisions of the law of the Member State in which a liquidation procedure is initiated in regard to a Community credit institution via actions for nullity, actions to set aside or actions for unenforceability of deeds that are prejudicial to the creditors collectively shall not apply if the beneficiary of such an action can show that it is subject to the law of another Member State and that said law does not in any way permit it to be contested in the case in question.

In the case of reorganisation measures, the rule laid down in the previous paragraph shall apply only to actions prejudicial to the creditors which predate the adoption of such a measure.

*Inserted by Order No. 2004-1127 of 21 October 2004 Official Journal No. 247 of 22 October 2004*

Art. L. 613-31-8. - Where, in return for payment and through a deed executed after the adoption of a reorganisation measure or the commencement of a liquidation procedure, the credit institution disposes of:

1 An item of real estate;

2 A vessel or an aircraft subject to an entry in a public register;

3 Instruments or rights over instruments whose existence or transfer requires an entry in a register, an account or a centralised depositary system maintained or located in a Member State.

The validity of said deed shall be governed by the law of the Member State in which said real estate is located or under whose authority said register, said account or said depositary system is maintained.

*Inserted by Order No. 2004-1127 of 21 October 2004 Official Journal No. 247 of 22 October 2004*

Art. L. 613-31-9. - The administrator or liquidator appointed by the competent authority of another Member State shall be authorised to exercise all the powers he is authorised to exercise in said State in Metropolitan France and the overseas *départements* and also in Saint-Barthélemy and Saint Martin.

In exercising said powers, the administrator or the liquidator shall comply with French law, particularly in regard to the methods used to realise assets or to provide information to employees. Said powers shall not include execution measures requiring the use of force or the right to rule on a dispute or a disagreement.

The administrator or the liquidator may appoint individuals responsible for assisting them or representing them, *inter alia* in the Member States in which the credit institution's branches are located.

*Inserted by Order No. 2004-1127 of 21 October 2004 Official Journal No. 247 of 22 October 2004*

*Amended by Order No. 2008-698 of 11 July 2008 Art. 1 Official Journal of 16 July 2008*

Art. L. 613-31-10. - A decree issued following consultation with the Conseil d'Etat determines, where necessary, the implementing provisions of this subsection and, in particular, those relating to publication abroad of the measures referred to in Article L. 613-31-3, as well as the information sent to the creditors.

*Inserted by Order No. 2004-1127 of 21 October 2004 Official Journal No. 247 of 22 October 2004*

### Section 3 Specific supervisory scheme

*Numbering changed by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

Art. L. 613-32.

*Repealed by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

Art. L. 613-33. - The Autorité de Contrôle Prudentiel is responsible for monitoring the compliance of the institutions referred to in Articles L. 511-22 and L. 511-23 with the laws and regulations applicable to them under the terms of Article L. 511-24. It may examine their operating conditions and the status of their financial situation, taking due account of the supervision carried out by the competent authorities referred to in paragraph 2 of Article L. 511-21.

It also monitors compliance with the banking profession's conduct of business rules.

It exercises over said institutions the supervisory and disciplinary powers described in sections 5 to 7 of Chapter II. The delisting referred to in paragraph 7 of Article L. 612-39 and in the first paragraph of Article L. 312-5 effectively constitutes a prohibition on the institution continuing to provide banking services in France.

Where an institution referred to in Articles L. 511-22 and L. 511-23 is stripped of its approval or is the subject of a liquidation procedure, or if, in the case of a financial institution, it no longer meets the required conditions within the meaning

of Article L. 511-23, the Autorité de Contrôle Prudentiel shall take the necessary measures to prevent it from commencing new activities in France and to ensure that the depositors' interests are protected.

A decree issued following consultation with the Conseil d'Etat determines the procedures the Autorité de Contrôle Prudentiel follows when exercising the responsibilities and powers conferred on it by the previous paragraphs. It determines, in particular, the procedure for providing information to the competent authorities referred to in Article L. 511-21.

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 80 Official Journal of 7 May 2005*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

Art. L. 613-33-1. – For the purposes of Article L. 612-2 relative to the members of a clearing house established in France who are established outside of France, the Autorité de Contrôle Prudentiel shall take account of the supervision exercised by the competent authorities of each State concerned and, for said purpose, may enter into a bilateral agreement with them, as provided for in Article L. 632-13.

For the exercise of its disciplinary powers, the delisting referred to in paragraph 7 of Article L. 612-39 and in the first paragraph of Article L. 312-5 effectively constitutes a prohibition on the institution's continued membership of a clearing house established in France.

*Inserted by Act No. 2001-1168 of 11 December 2001 Art. 27 13 Official Journal of 12 December 2001*

*Amended by Order No. 2007-1490 of 18 October 2007 Art. 5 Official Journal of 19 October 2007*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

Art. L. 613-33-2. – Without prejudice to the supervision exercised by the competent authorities referred to in paragraph 1 of Article L. 522-12, the Autorité de Contrôle Prudentiel is responsible for monitoring compliance by the entities referred to in paragraph II of Article L. 522-13 with the laws and regulations that apply to them. It may examine the manner in which they conduct their payment services business and the appropriateness of their financial situation for said business.

It shall exercise over said institutions the supervisory and disciplinary powers described in sections 5 to 7 of Chapter II. The delisting referred to in paragraph 7 of Article L. 612-39 effectively constitutes a prohibition on the payment institution providing payment services in France.

Where approval is withdrawn from an entity referred to in paragraph II of Article L. 522-13 or where liquidation proceedings are initiated against it, the Autorité de Contrôle Prudentiel shall take the necessary measures to prevent it from commencing new activities in France and to ensure that the interests of the users of payment services are protected.

A decree issued following consultation with the Conseil d'Etat determines the procedures that the Autorité de Contrôle Prudentiel follows when exercising the responsibilities and powers conferred on it by the previous paragraphs. It determines, inter alia, the procedure for providing information to the competent authorities referred to in Article L. 522-12.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 15 Official Journal of 16 July 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 12 Official Journal of 23 October 2010*

## Section 4 Implementation of the deposit guarantee fund

*Numbering changed by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

Art. L. 613-34. – The Autorité de Contrôle Prudentiel shall consult the Chairman of the Executive Board of the deposit guarantee fund on any matter concerning an institution in respect of which it intends to implement the guarantee fund or for which it intends to propose a precautionary measure by said fund.

The Chairman of the Executive Board shall also be heard, at his request, by the Autorité de Contrôle Prudentiel.

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

## Chapter IV Consultative Authorities

### Section 1 Comité Consultatif du Secteur Financier and Comité Consultatif de la Législation et de la Réglementation Financières

*(Title Art. 22 LSF 2003-706)*

*(Subsection 1 Conseil national du crédit et du titre) Repealed by Article 48 LSF 2003-706*

Art. L. 614-1. – The Comité Consultatif du Secteur Financier is responsible for examining questions relating to the relations between credit institutions, investment firms and insurance companies on the one hand, and their respective clients on the other, and for proposing any appropriate measures in relation thereto, in the form, inter alia, of opinions or recommendations of a general nature.

Questions may be referred to the Comité by the Minister for the Economy, by the organisations that represent the clients and by the professional bodies from which its members are drawn. It may also act on its own initiative at the request of the majority of its members.

The Comité is composed primarily, and in equal numbers, of representatives of the credit institutions, the payment institutions, the investment firms, the insurance companies, the general insurance agents and the insurance brokers on the one hand, and of the clients' representatives on the other.

The composition of the Comité, the conditions of appointment of its members and of its Chairman, and its organisational and operating rules, are determined by decree.

**The Comité is responsible for monitoring the trend of the fees that credit institutions and payment institutions apply for services provided to individuals for non-business purposes.**

*Amended by Act No. 2003-706 of 1 August 2003 Art. 22 I, II, Art. 48 II 3 Official Journal of 2 August 2003*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 15 Official Journal of 16 July 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 45 Official Journal of 23 October 2010*



Art. L. 614-2. Any proposed government bill or order and any Community regulation or directive relating to the insurance sector, the banking sector or investment firms shall be referred to the Comité Consultatif de la Législation et de la Réglementation Financières by the Minister for the Economy for an opinion before it is examined by the Council of the European Communities, save for the texts that relate to the Autorité des Marchés Financiers or which come within its area of competence.

Draft decrees or orders, other than individual measures, relating to the same areas may be adopted only after the opinion of the Comité Consultatif de la Législation et de la Réglementation Financières has been sought. Its opinion shall also be sought by the Minister for the Economy concerning requests for approval of the conduct of business rules referred to in Article L. 611-3-1. An unfavourable opinion from the Comité on said draft documents cannot be disregarded until the Minister for the Economy has requested a second deliberation by said Comité.

The composition of the Comité, the conditions of appointment of its members and of its Chairman, as well as its organisational and operating rules, are determined by decree.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 22 I, Art. 26 I, Art. 48 II 3 Official Journal of 2 August 2003*

*Amended by Order No. 2008-1271 of 5 December 2008 Art. 1 Official Journal of 6 December 2008*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 15 Official Journal of 16 July 2009*

Art. L. 614-3. – The salaried employees who are members of the Comité Consultatif du Secteur Financier or of the Comité Consultatif de la Législation et de la Réglementation Financières shall be given sufficient time to ensure that they are able to prepare for, travel to and participate in the meetings. Said time shall be treated as effective working time for the calculation of social-security benefit entitlement. Said employees must inform their employer of their appointment, and of each meeting, as soon as they receive the notice to attend.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 22 I, Art. 27 I, Art. 48 II 3 Official Journal of 2 August 2003*

*Arts. L. 614-4 to L. 614-6 repealed by LSF 2003-706 Art. 48)*

*(Subsection 2 Comité Consultatif repealed by Article 48 LSF 2003-706 reference replaced by the reference to the Comité Consultatif du Secteur Financier LSF, Art. 46, V, 3)*

*(Section 2 Haut Conseil du Secteur Financier Public et Semi-Public Repealed by decree No. 2008-1029 of 9 October 2008 Official Journal of 10 October 2008 and decision No. 2008-212 L of 18 September 2008 Art. L. 614-7 repealed)*

## Chapter V Other institutions

*Inserted by Act No. 2006-387 of 31 March 2006 Art. 26 Official Journal of 1 April 2006*

## Section 1 Government representatives and supervision of financial activities

*Section numbering changed by Order No. 2009-866 of 15 July 2009 Art. 15 Official Journal of 16 July 2009*

Art. L. 615-1. - The Minister for the Economy shall appoint a Government representative to any central body referred to in Article L. 511-30 or to any credit institution to which the State has entrusted the exercise of State authority or a public interest mission.

A decree issued following consultation with the Conseil d'Etat determines the implementing provisions of this article. It specifies, inter alia, the circumstances in which the Government representative may challenge the decisions of the central body's deliberative bodies or those of the credit institution regarding the implementation of the exercise of State authority or of the public-interest mission which have been entrusted to him.

*Inserted by Act No. 2006-387 of 31 March 2006 Art. 26 Official Journal of 1 April 2006 (formerly Article L.511-32 II)*

## Section 2 The Banking Mediation Commission

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 15 Official Journal of 16 July 2009*

Art. L. 615-2. – The Banking Mediation Commission is responsible for examining the mediators' reports and drawing up a banking mediation report each year which is sent to the Comité Consultatif du Secteur Financier. Said Comité is also tasked with laying down the terms and conditions under which the mediators' duties are performed, with particular emphasis on ensuring their independence. It is informed of the terms, and the amount, of the allowances and compensation paid to mediators by credit institutions or payment institutions. Said Comité may send recommendations to credit institutions, payment institutions and mediators.

The Banking Mediation Commission is chaired by the Governor of the Banque de France or his representative. The other members are appointed by order of the Minister for the Economy, with seat allocation as follows: one individual proposed by the Collège de Consommateurs et Usagers du Conseil National de la Consommation (Board of Users and Consumers of the National Consumers Council), one individual proposed by the Association Française des Établissements de Crédit et des Entreprises d'Investissement (French Association of Credit Institutions and Investment Firms) and two individuals chosen on account of their expertise.

A decree issued following consultation with the Conseil d'Etat determines the implementing provisions of this article.

*Inserted by Order No. 2009-866 of 15 July 2009 Art. 15 Official Journal of 16 July 2009*

# PART II THE AUTORITE DES MARCHES FINANCIERS

*(Title replaced by LSF 2003-706)*

## Sole chapter The Autorité des Marchés Financiers

*(Title replaced by LSF 2003-706)*

### Section 1 Duties

Art. L. 621-1. - The Autorité des Marchés Financiers (AMF), an independent public authority with legal personality, oversees the protection of savings invested in the financial instruments and assets referred to in paragraph II of Article L. 421-1 which give rise to an offer to the public or to admission to trading on a regulated market and in any other investment offered to the public. It also monitors disclosure to investors and the orderly operation of the markets in the financial instruments and assets referred to in paragraph II of Article L. 421-1. It lends its support to the regulation of said markets at a European and an international level.

**In carrying out its duties, the Autorité des Marchés Financiers takes account of the objectives of financial stability throughout the European Union and the European Economic Area and convergent implementation of the domestic and European Union provisions while also embracing the best practices and recommendations deriving from the European Union's provisions relating to supervision. It cooperates with the competent authorities of the other States.**

It also ensures that the entities subject to its supervision implement the appropriate means to comply with the approved conduct of business rules referred to in Article L. 611-3-1.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 2 Official Journal of 2 August 2003*

*Amended by Order No. 2008-1271 of 5 December 2008 Art. 1 Official Journal of 6 December 2008*

*Amended by Order No. 2009-80 of 22 January 2009 Art. 6 Official Journal of 23 January 2009*

*Amended by Act No. 2009-526 of 12 May 2009 Art. 138 Official Journal of 13 May 2009*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 3 and 9 Official Journal of 23 October 2010*

### Section 2 Composition

Art. L. 621-2. **I** - I-The Autorité des Marchés Financiers consists of a Board, an Enforcement Commission and, where required, specialised commissions and consultative commissions.

Except as otherwise herein provided, the responsibilities entrusted to the Autorité des Marchés Financiers shall be exercised by the Board.

II.-The Board is composed of sixteen members:

1. A chairman, appointed by decree;
2. A councillor of the Conseil d'Etat designated by the Vice-President of said body;
3. A justice of the court of cassation designated by the Chief Justice of said court;
4. A senior member of the court of auditors (Cour des Comptes) designated by the Auditor General;

5. A representative of the Banque de France designated by its governor;

6 The Chairman of the Autorité des Normes Comptables;

7 Three members with legal and financial expertise and experience in securities issuance, financial-instrument admission to trading on a regulated market and financial-instrument investments, designated by the President of the Senate, the President of the National Assembly and the Chairman of the Conseil Economique et Social (Economic and Social Council) respectively;

8 Six members with legal and financial expertise and experience in securities issuance, financial-instrument admission to trading on a regulated market and financial-instrument investments, designated by the Minister for the Economy after consultation with organisations representing securities-issuing industrial and commercial companies and industrial and commercial companies whose securities are admitted to trading on a regulated market, fund management companies and other investors, investment service providers, market undertakings, clearing houses, operators of clearing and settlement systems and central securities depositaries;

9. A representative of the employee shareholders designated by the Minister for the Economy following consultation with the representative labour unions and employee associations.

The Chairman of the Autorité des Marchés Financiers is empowered to act on behalf of the AMF before any court.

The Chairman of the Autorité des Marchés Financiers is subject to the rules of disqualification for public office.

The Chairman's term of office is five years with effect from his appointment. He may not be reappointed.

The term of office of the other Board members, except for those referred to in paragraphs 5 and 6, is five years and they may be reappointed once. After expiry of said five-year period, the members shall remain in office until the first meeting of the newly appointed Board takes place.

If the seat of a Board member, other than the Chairman, becomes vacant for whatever reason, it shall be filled for the unexpired portion of the former member's term of office. A term of office of less than two years shall not be taken into account for application of the reappointment rule laid down in the previous paragraph.

Pursuant to terms set forth in a decree issued following consultation with the Conseil d'Etat, one-half of the members of the Board shall stand down every thirty months. The term of office shall be calculated from the date of the first meeting of the Board.

III.-As determined in a decree issued following consultation with the Conseil d'Etat, the Board may delegate authority to make decisions of individual scope to specialised commissions composed of its members and chaired by the AMF Chairman.

The Board may also set up consultative commissions of experts to assist it in preparing decisions.

IV.-The Autorité des Marchés Financiers has an Enforcement Commission responsible for imposing the sanctions referred to in Articles L. 621-15 and L. 621-17.

The Enforcement Commission has twelve members:

1 Two councillors of the Conseil d'Etat designated by the Vice-President of that body;

2 Two justices of the court of cassation designated by the Chief Justice of said court;

3 Six qualified individuals with legal and financial expertise and experience in securities issuance, admission to trading on a regulated market of financial instruments and investment of savings in financial instruments, designated by the Minister for the Economy following consultation with the organisations that represent the industrial and commercial companies whose financial instruments are offered to the public or are admitted to trading on a regulated market, the fund management companies and other investors, the investment service providers, the market undertakings, the clearing houses, the operators of clearing and settlement systems, and the central securities depositaries;

4 Two representatives of the employees of the investment service providers, fund management companies, market undertakings, clearing houses, operators of clearing and settlement systems and central securities depositaries, designated by the Minister for the Economy following consultation with the representative labour unions.

The Chairman is elected by the members of the Commission from among the individuals referred to in paragraphs 1 and 2.

The Commission may establish divisions of six members each, chaired by one of the individuals referred to in paragraphs 1 and 2.

The functions of members of the Enforcement Commission are incompatible with those of Board members.

Enforcement Commission members serve a five-year term of office and may be reappointed once.

After expiry of the five-year period, the members shall remain in office until the first meeting of the reappointed Commission takes place.

In the event of an Enforcement Commission member's seat becoming vacant for whatever reason, it shall be filled for the unexpired portion of the former member's term of office. A term of office of less than two years shall not be taken into account for application of the reappointment rule laid down in the previous paragraph.

Pursuant to terms set forth in a decree issued following consultation with the Conseil d'Etat, one-half of the members of the Enforcement Commission shall stand down every thirty months. The term of office shall run from the date of the first meeting of the Commission.

V.-The employees appointed as members of the Autorité des Marchés Financiers shall be given sufficient time to ensure that they can prepare for, travel to and participate in the meetings. Such time shall be treated as effective working time for the calculation of social-security benefit entitlement. The employees concerned must inform their employer of their appointment, and of each meeting, as soon as they receive the notice to attend.

*Amended by Act No. 2001-420 of 15 May 2001 Art. 24 Official Journal of 16 May 2001*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 3 Official Journal of 2 August 2003*

*Amended by Order No. 2009-79 of 22 January 2009 Art. 6 Official Journal of 23 January 2009*

*Amended by Order No. 2009-80 of 22 January 2009 Art. 6 Official Journal of 23 January 2009*

## Section 3 Operating rules

Art. L. 621-3. - I. - **The Director General of the Treasury or his representative attends all the sessions of the Autorité des Marchés Financiers, without voting rights.** The decisions of the Enforcement Commission are taken in his absence. He may, other than in relation to sanctions, request a second deliberation under conditions determined in a decree issued following consultation with the Conseil d'Etat.

II. - The decisions of each session of the Autorité des Marchés Financiers shall be taken on a majority of the votes cast. In the event of there being a tied vote, other than in relation to sanctions, the Chairman shall have a casting vote.

In the event of an emergency duly declared by its Chairman, the Board may, other than in relation to sanctions, deliberate by means of written consultation.

A decree issued following consultation with the Conseil d'Etat determines the rules applicable to the proceedings of the Autorité des Marchés Financiers' sessions.

The General Regulation of the Autorité des Marchés Financiers determines the implementing provisions of said rules.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 4 Official Journal of 2 August 2003*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 6 Official Journal of 23 October 2010*

Art. L. 621-4. I. - Any member of the Autorité des Marchés Financiers must inform the Chairman of:

1 The interests he held during the two years preceding his appointment, and those he currently holds or comes to hold;

2 The economic or financial functions he performed during the two years preceding his appointment and those he currently performs or comes to perform;

3 Any remit within a legal entity held by him during the two years preceding his appointment and those he currently holds or comes to hold;

Said information, and that concerning the Chairman, shall be made available to the members of the Autorité des Marchés Financiers.

No member of the Autorité des Marchés Financiers may deliberate on a matter in which he himself or, where applicable, a legal entity in which he performed functions or held a remit during the two years preceding the deliberation has an interest, or had one during the same period. Nor may he participate in a deliberation concerning a matter in which he himself or, where applicable, a legal entity in which he performed functions or held a remit during the two years preceding the deliberation, represented one of the parties involved during the same period.

The Chairman of the Autorité des Marchés Financiers shall take the appropriate measures to ensure compliance with the obligations and prohibitions deriving from this paragraph I.

The General Regulation of the Autorité des Marchés Financiers determines the procedures for preventing conflicts of interest.

II.-The members, staff and employees of the Autorité des Marchés Financiers and the experts appointed to the consultative commissions referred to in III of Article L. 621-2 are bound by professional secrecy under the conditions and subject to the penalties provided for in Article L. 642-1.

Such secrecy cannot be invoked against the judicial authorities acting within the scope of criminal proceedings or in connection with court-ordered liquidation proceedings instituted against an entity referred to in paragraph II of Article L. 621-9.

III.-The provisions of Chapter VIII of Part II of Book 1 of the Commercial Code are applicable to members of the Autorité des Marchés Financiers. No individual who has been sanctioned under the provisions of this code during the preceding five years may be a member of the Autorité des Marchés Financiers.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 5 Official Journal of 2 August 2003*

*Amended by Act No. 2005-428 of 6 May 2005 Art. 4 Official Journal of 7 May 2005*

Art. L. 621-5. - A decree issued following consultation with the Conseil d'Etat determines the conditions and limits within which:

1 The Board may delegate authority to its Chairman or, in the event of his being absent or unable to perform his functions, to another of its members, to make decisions of an individual nature which fall within its jurisdiction;

2 The Board may delegate authority to a specialist commission pursuant to paragraph III of Article L. 621-2;

3 The Chairman of the Autorité des Marchés Financiers may delegate his signature in those matters where the laws or regulations grant him specific competence.

*Amended by Act No. 2001-420 of 15 May 2001 Art. 26 Official Journal of 16 May 2001*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 6 Official Journal of 2 August 2003*

Art. L. 621-5-1. - The AMF departments are managed by a Secretary General. To fill said post, the AMF Chairman submits a proposal to the Board, which deliberates thereon and formulates an opinion within one month. Upon expiry of said time limit, the Secretary General is appointed by the Chairman. Said appointment is subject to the approval of the Minister for the Economy. Until such time as the Secretary General is appointed, his functions may be performed by an individual designated by the Chairman of the AMF.

The staff of the Autorité des Marchés Financiers is composed of public-law contract employees and private-law employees. As determined in a decree issued following consultation with the Conseil d'Etat, public-sector employees may be seconded to the Autorité des Marchés Financiers in a position provided for in the rules which govern them.

The provisions of Articles L.2111-1, L.2141-4, L.2311-1 and L.2312-1 to L. 2312-5, L. 2321-1, L. 2322-1 to L. 2322-4, L. 4523-11 and L. 4523-12, L. 4523-14 to L. 4523-17 and L. 4524-1 of the Labour Code shall be applicable to the staff of the Autorité des Marchés Financiers. Said provisions may nevertheless be subject to amendments set forth in a decree issued following consultation with the Conseil d'Etat.

On a proposal from the Secretary General, the Board determines the bylaws and ethical rules applicable to the staff of the Autorité des Marchés Financiers and establishes the general framework of remuneration. The Secretary General reports to the Board on the management of the units in the manner determined by the latter.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 7 I Official Journal of 2 August 2003*

Art. L. 621-5-2. - The Autorité des Marchés Financiers has financial autonomy. Its budget is decided by the Board on a proposal from the Secretary General. The provisions of the Act of 10 August 1922 relating to the organisation of cost control do not apply to it.

It receives the revenue from the taxes established in Article L. 621-5-3.

A decree issued following consultation with the Conseil d'Etat determines its members' compensation scheme, its accounting system and the implementing provisions of paragraph I.

II. - The real estate of the Banque de France is subject to the provisions of the Code Général de la Propriété des Personnes Publiques (General Code of Public Entities' Property) applicable to State public entities.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 7 I Official Journal of 2 August 2003*

*Amended by Order No. 2006-460 of 21 April 2006 Art. 3 Official Journal of 22 April 2006*

Art. L. 621-5-3. I. - A fixed rate of duty shall be due from the entities subject to the supervision of the Autorité des Marchés Financiers, where the legislation or regulations so provide, in the following cases:

1 Where the Autorité des Marchés Financiers publishes a declaration made by an entity, acting jointly or alone, pursuant to Articles L. 233-7 or L. 233-11 of the Commercial Code. The duty payable, as determined by decree, shall be above 500 euros and below or equal to 1,000 euros, due on the day of filing of said document;

2 Upon examination of the obligation to file a public offer, the duty payable, as determined by decree, shall be above 2,000 euros and below or equal to 4,000 euros, due on the day on which the decision of the Autorité des Marchés Financiers is made known;

3 Upon inspection of an annual reference document or the basic document submitted by a company whose shares are admitted to trading on a regulated market pursuant to Article L. 621-18. The duty payable, as determined by decree, shall be above 500 euros and below or equal to 1,000 euros, due on the day of filing of said document;

4 When the marketing in France of an undertaking for collective investment subject to the legislation of a Foreign State, or a compartment of such an undertaking, is authorised, the duty payable, as determined by decree, shall be above 1,000 euros and below or equal to 2,000 euros, due on the day on which the application for authorisation is made in the first year and on 30 April in subsequent years;

5 Upon the submission by an issuer of an information document concerning a debt instrument issuance programme requiring prior registration by the Autorité des Marchés Financiers pursuant to Article L. 621-8 or relating to financial futures referred to in paragraph II of Article L. 211-1, the duty payable, as determined by decree, shall be above 1,000 euros and below or equal to 2,000 euros, due on the day of filing of said document;

6 Upon issuance of each tranche of warrants on the basis of an information document subject to the prior approval of the Autorité des Marchés Financiers pursuant to Article L. 621-8. The duty payable is set at 150 euros per tranche, due on the day of issue;

7 Upon the filing with the Autorité des Marchés Financiers of an information document or draft model contract relating to a miscellaneous property investment plan governed by Articles



L. 550-1 to L. 550-5, the duty payable, as determined by decree, shall be above 6,000 euros and below or equal to 8,000 euros, due on the day of filing of said document.

II.- A contribution shall be due from the entities subject to the supervision of the Autorité des Marchés Financiers, where the legislation or regulations so provide, in the following cases:

1 Where a public purchase, withdrawal or price guarantee offer is made. The contribution shall be the sum of a duty set at 10,000 euros, on the one hand, and, on the other hand, an amount equal to the value of the financial instruments bought, exchanged, presented or covered, multiplied by a rate, determined by decree, which cannot be above 0.30‰ where the securities involved give, or could give, direct or indirect access to the capital or the voting rights, and 0.15‰ in other cases.

Said contribution shall be payable by any initiator of a bid, regardless of the result, on the day on which the results of the procedure are published;

2 Upon submission by an issuer of an information document concerning an issue, a public transfer, an admission to trading on a regulated market or a redemption of securities subject to the prior approval of the Autorité des Marchés Financiers pursuant to Article L. 621-8. Said contribution shall be based on the value of the financial instruments at the time of the transaction. The rate thereof, determined by decree, cannot be above 0.20‰ where the securities involved give, or could give, access to the capital, and 0.05‰ where the transaction relates to debt instruments.

The same contribution shall be payable where securities are redeemed within the framework of the redemption programme implemented by the issuer.

The contribution shall be payable on the day of closure of the procedure, or, in the case of a redemption of securities, on the day of publication of the result. The amount thereof cannot be below 1,000 euros where the securities involved give, or could give, access to the capital, and cannot be above 5,000 euros in other cases;

3 For the supervision of the entities referred to in subparagraphs 1 to 8 of paragraph II of Article L. 621-9, said contribution shall be calculated as follows:

a) For the entities referred to in subparagraphs 1 and 2 of paragraph II of Article L. 621-9, the contribution shall be set at an amount per investment service for which they are authorised other than the investment service referred to in paragraph 4 of Article L. 321-1, and per related service for which they are authorised, as determined by decree, which shall be above 3,000 euros and below or equal to 5,000 euros. Said amount shall be multiplied by two if the equity capital of the entity concerned is above 45 million euros and below or equal to 75 million euros, by three if it is above 75 million euros and below or equal to 150 million euros, by four if it is above 150 million euros and below or equal to 750 million euros, by six if it is above 750 million euros and below or equal to 1.5 billion euros and by eight if it is above 1.5 billion euros; the contribution payable by all the entities within the same group or by a group of entities affiliated to a central body within the meaning of Article L. 511-30, and by that body, cannot exceed an amount set by decree which is above 250,000 euros and below or equal to 1.5 million euros;

b) For the entities referred to in subparagraph 4 of paragraph II of Article L. 621-9, the contribution shall be equal to an amount determined by decree which is above 500 euros and below or equal to 1,000 euros;

c) For the entities referred to in subparagraphs 3, 5 and 6 of paragraph II of Article L. 621-9, the contribution shall be set at an amount equal to the operating income achieved by them in the previous financial year and declared within three months of

its closure at the latest, multiplied by a rate set by decree which cannot exceed 0.9%;

d) For the investment service providers authorised to provide the investment service referred to in paragraph 4 of Article L. 321-1 and the entities referred to in subparagraphs 7 and 8 of paragraph II of Article L. 621-9, the contribution shall be set at an amount equal to the outstanding units or shares of undertakings for collective investment and investment entities subject to foreign law, and of the assets under management, regardless of the country in which the assets are held or entered in the books, multiplied by a rate set by decree which cannot exceed 0.015‰ and which cannot be below 1,500 euros. The outstanding amounts shall be calculated as of 31 December of the previous year and declared by 30 April at the latest;

4 For the supervision of the entities referred to in subparagraph 10 of paragraph II of Article L. 621-9, said contribution shall be equal to an amount determined by decree which shall be above 500 euros and below or equal to 1,000 euros. **The institution that maintains the sole register referred to in Article L. 512-1 of the Insurance Code shall send the Autorité des Marchés Financiers a list of said entities drawn up as of 1 January of each financial year.**

**5 For the supervision of the entities referred to in subparagraph 16 of paragraph II of Article L. 621-9, said contribution shall be calculated as follows:**

**a) The duty payable upon registration, due on the day of filing of the application for registration, is determined by decree at an amount above 7,500 euros and below or equal to 20,000 euros;**

**b) For each year following the year of registration, the contribution shall be set at an amount equal to the operating income achieved during the previous financial year multiplied by a rate set by decree which cannot exceed 0.5% and cannot be below 10,000 euros. It shall be due three months after the end of the financial year.**

III. - The decrees referred to in this article are issued after consultation with the Board of the Autorité des Marchés Financiers.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 7 I Official Journal of 2 August 2003*

*Amended by Act No. 2006-1771 of 30 December 2006 Art. 111 Official Journal of 31 December 2006*

*Amended by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*Amended by Order No. 2009-15 of 8 January 2009 Art. 5 Official Journal of 9 January 2009*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 11 and 36 Official Journal of 23 October 2010*

Art. L. 621-5-4. - The duties and contributions referred to in Article L. 621-5-3 shall be calculated, authorised and collected according to the terms laid down for the revenues of the public administrative institutions of the State. Disputes relating to said duties and contributions shall be heard by the Administrative Court.

They shall be paid as and when determined by decree.

Payment shall be due thirty days from receipt of the notice to pay. The amount due shall attract monthly interest at the legal rate with effect from the thirty-first day following the date of receipt of the notice to pay, with any month begun counting as a whole month.

Where a party liable to pay a duty or a contribution does not provide the requested information required to determine the base for the contribution and its collection, the amount of the contribution shall be increased by 10%.

The increase may be raised to 40% if the document containing the information is not filed within thirty days of receipt of a formal demand sent by registered letter requiring production within said time limit, and to 80% if said document has not been delivered within thirty days of receipt of a second formal demand delivered in the same manner as the first.

The increases referred to in the two previous paragraphs cannot be imposed until thirty days have elapsed since delivery of the document informing the liable party of the intention to apply the envisaged increase to it, the grounds therefor and the opportunity said party has to present its observations within said time limit.

The investigators of the Autorité des Marchés Financiers, empowered as provided for in Article L. 621-9-1, shall check the declarations. For said purpose, they may request from the parties required to pay a duty or a contribution any information, proof or clarification regarding the declarations submitted.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 7 I Official Journal of 2 August 2003*

## Section 4 Powers

### Subsection 1 Regulation and decisions

*(title subsection Amended by Art. 8 LSF 2003-706)*

Art. L. 621-6. - In the performance of its duties, the Autorité des Marchés Financiers applies a General Regulation which is published in the Official Journal of the French Republic following approval by order of the Minister for the Economy.

The Autorité des Marchés Financiers may make decisions of individual scope when applying its General Regulation and in exercising its other competences. It may also publish instructions and recommendations to clarify the interpretation of the General Regulation.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 8 I, II Official Journal of 2 August 2003*

Art. L. 621-7. - The General Regulation of the Autorité des Marchés Financiers determines, inter alia:

I.-The rules of professional practice applicable to issuers who issue securities or whose financial instruments are admitted to trading on a regulated market, as well as the rules which must be complied with in transactions relating to the financial instruments and assets referred to in paragraph II of Article L. 421-1 which are admitted to trading on a regulated market or on a multilateral trading facility that is subject to the laws or regulations intended to protect investors from insider dealing, price manipulation and the dissemination of false information.

II.-The rules regarding takeover bids relating to securities admitted to trading on a regulated market.

III.-The conduct of business rules and the other professional obligations that must be complied with at all times by the legal entities and individuals referred to in paragraph II of Article L. 621-9.

IV.-For investment service providers, market undertakings, members of the regulated markets and clearing houses and their members:

1 The conditions under which investment service providers render the services described in Article L. 321-2;

2 The conditions of membership and professional practice referred to in Article L. 440-2 which apply to the members of the clearing houses;

3 The conditions under which a professional licence may be issued to, or withdrawn from, individuals placed under the authority, or acting on behalf of, investment service providers, market undertakings, members of the regulated markets, and clearing houses and their members;

4 The rules applicable to the legal entities and individuals referred to in Article L. 532-18-1;

5 The conditions under which, pursuant to Article L. 440-1, the Autorité des Marchés Financiers approves the rules of clearing houses, without prejudice to the powers conferred on the Banque de France by Article L. 141-4.

6 The conditions under which the members of a regulated market may conduct transactions in assets referred to in paragraph II of Article L. 421-1 for own account and for a third party.

V.-Concerning management activities carried out for third parties and collective investments:

1 Approval and conduct of business conditions for portfolio management companies;

2 Approval and conduct of business conditions for companies that manage collective investment undertakings;

3 Approval conditions for collective investment undertakings;

4 Conduct of business conditions for depositaries of collective investment undertakings.

VI.-Concerning the custody and administration of financial instruments, the central securities depositaries and the settlement systems for financial instruments:

1 The conditions under which legal entities which issue securities or admit financial instruments to trading on a regulated market and likewise the intermediaries authorised to do so as provided for in Article L. 542-1 may provide custody or administration of financial instruments;

2 The conditions under which central securities depositaries shall be approved by the Autorité des Marchés Financiers and the conditions applicable to the AMF's approval of their operating rules;

3 The general organisational and operational principles of the systems used for settlement and delivery of financial instruments and the terms of approval of their operating rules by the Autorité des Marchés Financiers, without prejudice to the powers conferred on the Banque de France by Article L. 141-4.

VII. Concerning regulated markets within the meaning of Article L. 421-1, market undertakings and multilateral trading facilities:

1 The general organisational and operational principles the regulated markets must comply with, and the rules relating to the execution of transactions in the financial instruments and assets referred to in Article L. 421-1 admitted to said markets;

2 The conditions under which the Autorité des Marchés Financiers, pursuant to Articles L. 421-4, L. 421-5 and L. 421-10, proposes the recognition, review or withdrawal of regulated market status within the meaning of Article L. 421-1;

3 The general organisational and operational principles of multilateral trading facilities;

4 The general organisational and operational principles of the market undertakings as provided for in paragraph III of Article L. 421-11;

5 The conditions under which the Autorité des Marchés Financiers authorises a market undertaking to run a multilateral trading facility, pursuant to the provisions of the second paragraph of Article L. 424-1;

6 The rules relating to reporting to the Autorité des Marchés Financiers and to the public on the orders, transactions and positions on the financial instruments and assets referred to in paragraph II of Article L. 421-1 admitted to trading on a regulated market.

VIII.- Concerning entities, other than those referred to in subparagraphs 1 and 7 of paragraph II of Article L. 621-9, which produce and circulate financial analyses:

1 The conditions under which the individuals or entities referred to in Article L. 544-1 conduct their business;

2 The conduct of business rules applicable to individuals placed under the authority, or acting on behalf, of entities which produce and circulate financial analyses in the normal course of their business, and the provisions intended to ensure the independence of their opinions and the prevention of conflicts of interest.

IX.- The rules relating to investment recommendations intended for the public concerning any issuer whose financial instruments are admitted to trading on a regulated market or concerning a financial instrument issued by it, where they are produced or disseminated by any legal entity or individual in connection with its/his business activities, as well as the rules applicable to legal entities and individuals which/who carry out investment research or disseminate its results or which/who produce or disseminate other information recommending or suggesting an investment strategy for assets referred to in paragraph II of Article L. 421-1 which is intended for distribution channels or the public.

A decree issued following consultation with the Conseil d'Etat stipulates the cases in which information relating to a financial instrument or an asset referred to in paragraph II of Article L. 421-1 given to the public constitutes production or dissemination of an investment recommendation within the meaning of the previous paragraph.

X.-The implementing rules for the publication and reporting requirements stipulated in this code to ensure transparency of the financial markets which call for filing or dissemination in the press and electronically, or free provision of leaflets, in connection with the issuance of securities or the admission of financial instruments to trading on a regulated market.

XI.-Concerning the credit rating service:

1 The registration and conduct of business conditions for the credit rating agencies referred to in Article L. 544-4;

2 The obligations relating to the presentation and publication of ratings and the publication requirements imposed on the credit rating agencies referred to in Article L. 544-4;

3 The conduct of business rules applicable to individuals placed under the authority, or acting on behalf, of the credit rating agencies referred to in Article L. 544-4 and the provisions intended to ensure the independence of their opinions and the prevention of conflicts of interest;

4 The arrangements for the annual publication of the general remuneration scheme for the credit rating agencies

referred to in Article L. 544-4, by category of issuers and products rated..

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 8 I, III Official Journal of 2 August 2003*

*Amended by Act No. 2005-842 of 26 July 2005 Art. 26 and 29 Official Journal of 27 July 2005*

*Amended by Act No. 2007-212 of 20 February 2007 Art. 9 I Official Journal of 21 February 2007*

*Amended by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*Amended by Order No. 2009-80 of 22 January 2009 Art. 6 Official Journal of 23 January 2009*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 9, 11 and 25 Official Journal of 23 October 2010*

Art. L. 621-7-1. – The General Regulation of the Autorité des Marchés Financiers may also lay down rules relating to the information provided to the Autorité des Marchés Financiers and to the public concerning the orders, **transactions and positions** in financial instruments not admitted to trading on a regulated market.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 25 Official Journal of 23 October 2010*

Art. L. 621-7-2. - In the event of the Autorité des Marchés Financiers failing to act despite a formal demand sent by the Minister for the Economy, the urgent measures necessitated by the circumstances shall be stipulated by decree.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 8 IV Official Journal of 2 August 2003*

*Numbering changed by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007 (formerly Article L. 621-7-1)*

## Subsection 2 Authorisation of public issues

*Title of the subsection amended by Act No. 2005-842 of 26 July 2005 Art. 26 Official Journal of 27 July 2005*

Art. L. 621-8. I. - The draft document referred to in Article L. 412-1, or any equivalent document required by the legislation of another State party to the European Economic Area Agreement, shall be subject to prior approval from the Autorité des Marchés Financiers for any transaction carried out in the European Economic Area where the issuer of the securities to which the transaction relates has its registered office in France and where the transaction involves capital securities or securities giving access to the capital within the meaning of Article L. 212-7 or debt instruments having a nominal value below 1,000 euros which are not money market instruments within the meaning of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, and which have a maturity of under twelve months.

II.- The draft document referred to in paragraph I shall also be subject to prior approval from the Autorité des Marchés Financiers in the cases determined in its General Regulation for any transaction carried out in the European Economic Area where the transaction is carried out in France or where the issuer of the securities to which the transaction relates has its registered office there and where the transaction involves debt instruments, other than securities giving access to the capital within the meaning of Article L. 212-7, conferring the right to buy or sell any other security or giving rise to a cash settlement,

including warrants, or debt instruments having a nominal value greater than or equal to 1,000 euros which are not money market instruments within the meaning of the aforementioned Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004, and which have a maturity of under twelve months.

III.- The draft document referred to in paragraph I shall also be subject to prior approval from the Autorité des Marchés Financiers in the cases determined in its General Regulation for any transaction carried out in the European Economic Area where the issuer of the securities to which the transaction relates has its registered office outside the European Economic Area and where the transaction involves financial instruments whose initial public offer or assignment in the European Economic Area or first admission to a regulated market of a European Economic Area Member State took place in France.

IV.- The draft document referred to in paragraph I shall also be subject to prior approval from the Autorité des Marchés Financiers for any transaction carried out in France which involves financial instruments other than those referred to in paragraphs I and II.

V.- Where the Autorité des Marchés Financiers is not the authority responsible for approving the draft document referred to in paragraph I, it may, as provided for in its General Regulation and at the request of the supervisory authority of another State party to the European Economic Area Agreement, approve the aforementioned draft document.

VI.- In the cases referred to in paragraphs I to III, the Autorité des Marchés Financiers may ask the supervisory authority of another State party to the European Economic Area Agreement to approve the draft document referred to in paragraph I.

Where the supervisory authority of the other European Economic Area Member State agrees to the request, the Autorité des Marchés Financiers shall inform the entity carrying out the transaction thereof within three trading days.

VII.- Save for the cases envisaged in Article L. 412-1, the draft document subject to approval from the Autorité des Marchés Financiers shall be drawn up and published as provided for in its General Regulation.

VIII.- Any new fact or any error or inaccuracy in the information contained in the document referred to in paragraph I approved by the Autorité des Marchés Financiers which is likely to have a significant influence on the valuation of the financial instruments and occurs or is noted between the obtaining of approval and completion of the transaction, shall be recorded in a supplementary note to the document referred to in paragraph I. Said note shall be subject to approval as provided for in the General Regulation of the Autorité des Marchés Financiers.

IX. – Under circumstances and terms stipulated its General Regulation, the prior approval of the Autorité des Marchés Financiers shall also be required where an individual or a legal entity makes a public offer for financial instruments as provided for in Article L. 433-1. The note to which the AMF shall affix its seal of prior approval shall contain the employment details of the individual or legal entity making the public offer.

*Amended by Act No. 2001-420 of 15 May 2001 Art. 4 III Official Journal of 16 May 2001)*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 46 V 1, 2 Official Journal of 2 August 2003*

*Amended by Act No. 2005-842 of 26 July 2005 Art. 26 Official Journal of 27 July 2005*

*Amended by Act No. 2006-387 of 31 March 2006 Art. 3 Official Journal of 1 April 2006*

Art. L. 621-8-1. – I. – Before issuing the approval referred to in Article L. 621-8, the Autorité des Marchés Financiers shall verify that the document is complete and comprehensible and that the information it contains is correctly presented. The Autorité des Marchés Financiers shall indicate any statement to be altered or additional information to be inserted.

The Autorité des Marchés Financiers may also request any explanation or proof, particularly with regard to the issuer's situation, business and results and concerning any guarantors of the financial instruments to which the transaction relates.

II. - The Autorité des Marchés Financiers may suspend the transaction for a period which shall not exceed a limit set by its General Regulation where it has reasonable grounds for suspecting that it breaches the laws or regulations applicable to it.

The Autorité des Marchés Financiers may prohibit the transaction:

1 Where it has reasonable grounds for suspecting that an issue or an assignment breaches the laws or regulations applicable to it;

2 Where it notes that a proposed admission to trading on a regulated market breaches the laws or regulations applicable to it.

*Inserted by Act No. 2005-842 of 26 July 2005 Art. 26 Official Journal of 27 July 2005*

Art. L. 621-8-2. – The General Regulation of the Autorité des Marchés Financiers sets forth the terms and conditions under which procedures involving public offers of securities or the admission of financial instruments to trading on a regulated market may be the subject of marketing actions.

The AMF may prohibit or suspend marketing actions for ten trading days where it has reasonable grounds for suspecting that they breach the provisions of this article.

*Inserted by Act No. 2005-842 of 26 July 2005 Art. 26 Official Journal of 27 July 2005*

*Amended by Order No. 2009-80 of 22 January 2009 Art. 6 Official Journal of 23 January 2009*

Art. L. 621-8-3. – Where the Autorité des Marchés Financiers is not the competent authority for approval of the draft document referred to in paragraph I of Article L. 621-8 and it establishes, relative to a procedure involving a public offer of securities or the admission of financial instruments to trading on a regulated market carried out in France, that irregularities have been committed by the entity carrying out the procedure or by the entities responsible for the placement, it shall duly inform the supervisory authority of the State party to the European Economic Area Agreement that approved said document.

If, despite the measures taken by said authority, or on account of their inadequacy, the issuer or the institutions responsible for the placement continue to violate the laws or regulations applicable to them, the Autorité des Marchés Financiers may, after duly informing the supervisory authority that approved the document, take all necessary measures to protect the investors.

The Autorité des Marchés Financiers shall inform the European Commission of said measures as soon as possible.

*Inserted by Act No. 2005-842 of 26 July 2005 Art. 26 Official Journal of 27 July 2005*



*Amended by Order No. 2009-80 of 22 January 2009 Art. 6 Official Journal of 23 January 2009*

### Subsection 3 Inspections and investigations

*(Amended by LSF 2003-706 article 9)*

Art. L. 621-9. - I. - In the performance of its duties, the Autorité des Marchés Financiers carries out inspections and investigations.

It monitors the conformity of transactions in securities which are offered to the public and in the financial instruments and assets referred to in paragraph II of Article L. 421-1 admitted to trading on a regulated market or on a multilateral trading facility which is subject to the laws and regulations intended to protect investors from insider dealing, price manipulation and the dissemination of false information. The markets in instruments created to represent banking transactions which, pursuant to Article L. 214-4, cannot be held by collective investment undertakings, are not subject to the supervision of the Autorité des Marchés Financiers.

II.- The Autorité des Marchés Financiers also monitors compliance with the professional obligations that the following legal entities and individuals placed under their authority or acting on their behalf must assume pursuant to the laws and regulations:

1 Authorised investment service providers or those conducting their business in France under freedom of establishment as well as legal entities placed under their authority or acting on their behalf;

2 Entities authorised to provide custody or administration of the financial instruments referred to in Article L. 542-1;

3 Central securities depositaries and operators of systems used for settlement and delivery of financial instruments;

4 Members of the regulated markets who are not investment service providers;

5 Market undertakings;

6 Clearing houses for financial instruments;

7 Collective investment undertakings and the companies that manage them;

8 Miscellaneous property intermediaries;

9 The legal entities and individuals authorised to act in the capacity of direct marketers referred to in Articles L. 341-3 and L. 341-4;

10 Financial investment advisors;

11 Entities, other than those referred to in subparagraphs 1 and 7, who produce and disseminate financial analyses;

12 Depositaries of collective investment undertakings;

13 Real-estate appraisers;

14 The legal entities administering the group occupational pension schemes referred to in paragraph I of Article 8 of Order No. 2006-344 of 23 March 2006 or the collective retirement savings plans referred to in Article L. 443-1-2 of the Labour Code;

15 The tied agents referred to in Article L. 545-1;

16 The credit rating agencies referred to in Article L. 544-4;

17 The authorised professional bodies of financial investment advisors referred to in Article L. 541-4.

For entities other than those providing the services referred to in subparagraph 4 of Article L. 321-1 or the entities referred to in subparagraphs 7, 8, 10, 11 and 16 above, in respect of whom the Autorité des Marchés Financiers has sole competence, supervision shall be exercised without prejudice to the competence of the Autorité de Contrôle Prudentiel and, for those referred to in subparagraphs 3 and 6, without prejudice to the powers conferred on the Banque de France by Article L. 141-4.

The Autorité des Marchés Financiers is also responsible for ensuring compliance with the laws and regulations applicable to the investment service providers referred to in Article L. 532-18-1, as provided for in Articles 532-18-2, L. 532-19 and L. 532-21-1.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 9, Art. 10 Official Journal of 2 August 2003*

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 81 Official Journal of 7 May 2005*

*Amended by Order No. 2006-344 of 23 March 2006 Art. 10 Official Journal of 24 March 2006*

*Amended by Order No. 2005-1278 of 13 October 2005 Art. 5 Official Journal of 14 October 2005.*

*Amended by Act No. 2006-1770 of 30 December 2006 Art. 64 IV Official Journal of 31 December 2006*

*Amended by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*Amended by Order No. 2007-1490 of 18 October 2007 Art. 5 Official Journal of 19 October 2007*

*Amended by Order No. 2009-80 of 22 January 2009 Art. 6 Official Journal of 23 January 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 4, 9 and 11 Official Journal of 23 October 2010*

Art. L. 621-9-1. - Where the Secretary General of the Autorité des Marchés Financiers, or the Deputy Secretary General specifically appointed for such purpose, decides to carry out investigations, he shall empower the investigators under the terms laid down in the General Regulation.

The individuals selected for such assignments must meet ethical standards set forth in a decree issued following consultation with the Conseil d'Etat.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 11 I Official Journal of 2 August 2003*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 5 Official Journal of 23 October 2010*

Art. L. 621-9-2. As determined in a decree issued following consultation with the Conseil d'Etat, the Autorité des Marchés Financiers may:

1 Delegate to market undertakings and, where applicable, to clearing houses, the supervision of the business and transactions carried out by the members of a regulated market and by the investment service providers who have transmitted orders on said market. Said delegation is the subject of a memorandum of understanding and may be withdrawn at any time;

2 Have recourse, for its inspections and investigations, to external inspection sources, statutory auditors, experts included on a list of legal experts, or competent individuals, entities or authorities. Said individuals, entities and authorities may

receive remuneration in respect thereof from the Autorité des Marchés Financiers;

3 Delegate to the associations of financial investment advisors referred to in Article L. 541-4 the supervision of their members' activities. Said delegation shall be the subject of a memorandum of understanding and may be withdrawn at any time.

The Board or the Secretary General of the Autorité des Marchés Financiers may request the statutory auditors of companies whose securities are admitted to trading on a regulated market or on a multilateral trading facility which is subject to the laws and regulations intended to protect investors from insider dealing, price manipulation and the dissemination of false information, or for which an application for admission to trading on such markets has been submitted or an expert has been included on a list of legal experts to carry out any additional analysis or verification which they deem necessary for the entities or institutions whose securities are admitted to trading on a regulated market or on a multilateral trading facility which is subject to the laws and regulations intended to protect investors from insider dealing, price manipulation and the dissemination of false information, or for which an application for admission to trading on such markets has been submitted, and also for the entities referred to in paragraph II of Article L. 621-9. The costs and fees shall be borne by the Autorité des Marchés Financiers. The provisions of this paragraph shall also apply to statutory auditors who carry out assignments in the context of securities issuance.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 11 I Official Journal of 2 August 2003*

*Amended by Order No. 2009-80 of 22 January 2009 Art. 6 Official Journal of 23 January 2009*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 4 Official Journal of 23 October 2010*

**Art. L. 621-9-3** - Within the scope of the inspections and investigations referred to in Articles L. 621-9 and L. 621-9-1, professional secrecy may not be raised against the Autorité des Marchés Financiers or, where applicable, the market undertakings or clearing houses, supervisory bodies, entities or authorities referred to in Article L. 621-9-2 where they are assisting the Autorité des Marchés Financiers, with the exception of officers of the law.

For the purposes of this subsection, statutory auditors shall be released from professional secrecy in regard to the Autorité des Marchés Financiers.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 11 I Official Journal of 2 August 2003*

Art. L. 621-10. The investigators may, for the purposes of the investigation, require the submittal of any records on whatever medium, including data kept and processed by telecommunications operators within the purview of Article L. 34-1 of the Post and Telecommunications Code (Code des Postes et Télécommunications) and the service providers referred to in subparagraphs 1 and 2 of paragraph I of Article 6 of Act No. 2004-575 of 21 June 2004 for confidence in the digital economy, and may obtain copies thereof. They may summon and take statements from any individual capable of providing information. They may gain access to business premises.

*Amended by Amended Finance Bill No. 2001-1276 of 28 December 2001 Art. 62 III Official Journal of 29 December 2001*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 9, Art. 11 II Official Journal of 2 August 2003*

*Amended by Act No. 2004-575 of 21 June 2004 for confidence in the digital economy Art. 56 II Official Journal of 22 June 2004*

*Amended by Act No. 2004-669 of 9 July 2004 relating to electronic communications and audiovisual communication services Official Journal of 10 July 2004*

Art. L. 621-11. Any individual summoned shall have the right to be assisted by the advisor of his choice. The terms of the notice to attend and the circumstances in which said right shall be exercised are determined in a decree issued following consultation with the Conseil d'Etat.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 9, Art. 11 III Official Journal of 2 August 2003*

Art. L. 621-12. For the purpose of investigating the violations referred to in Articles L. 465-1 and L. 465-2, the liberty and custody judge of the Regional Court in whose jurisdiction the premises to be searched are located may, at the request of the AMF's Secretary General giving grounds for the search, authorise the AMF's investigators to enter any premises and seize documents.

The judge must verify that the request for authorisation which is submitted to him is well-founded; said request must contain all the information in the AMF's possession which justifies such a search. He shall designate the law enforcement officer who must be in attendance when such measures are enforced and who must keep him informed of their progress.

Said order shall make reference to the right of the occupant of the premises or his representative to be assisted by the advisor of his choice. The exercise of such right shall not give rise to suspension of the search and seizure operations. The means of, and time limit for, appeal shall be indicated in the order.

The order shall be notified verbally and on the spot, at the time of the search, to the occupant of the premises or his representative, who shall receive an exact copy thereof in return for a receipt or an acknowledgement of receipt appended to the minutes provided for in the tenth and eleventh paragraphs of this article. In the absence of the occupant of the premises or his representative, the order shall be notified, after the search, by registered letter with confirmation of receipt. Such notification shall be deemed given on the date of receipt indicated on the advice of delivery. If it cannot be thus notified, the order shall be delivered by a process server. A copy of the order shall be sent to the alleged perpetrator of the offences indicated in the first paragraph by registered letter with confirmation of receipt.

The order referred to in the first paragraph shall be immediately enforceable upon presentation of the minutes. Said order shall be appealable before the presiding judge of the court of appeal or his representative. The parties shall not be required to appoint legal counsel. Under the rules laid down by the Code of Civil Procedure (Code de Procédure Civile), the appeal must be lodged within fifteen days in a declaration handed in or sent to the court registry by registered mail or, with effect from 1 January 2009, by electronic means. Said time limit shall run from the date of handing in, the date of delivery or the date of service of the order. The appeal shall not have suspensive effect. The registry of the Regional Court shall send the case file, without delay, to the registry of the court of appeal, where the parties may consult it. The order of the presiding judge of the court of appeal may be subject to an appeal on points of law under the rules laid down by the Code of Civil Procedure. The time limit for an appeal on points of law is fifteen days.

The search shall take place under the authority and control of the judge who authorised it. He may visit the premises during the inspection and decide to suspend or terminate the inspection at any time.

The search cannot commence before 6.00 a.m. or after 9.00 p.m.; in places open to the public, it may also commence during normal opening hours. It shall be carried out in the presence of the occupant of the premises or his representative; should this prove impossible, the law enforcement officer shall enlist the services of two witnesses who are not under his authority or that of the AMF.

Only the AMF's investigators, the occupant of the premises or his representative and the law enforcement officer may consult the documents before they are seized.

The law enforcement officer shall initiate any appropriate step to ensure the observance of professional secrecy and of the defendant's rights pursuant to the provisions of the third paragraph of Article 56 of the Code of Criminal Procedure. Article 58 of said code shall apply.

Where the search is carried out in the office or home of an advocate, the premises of a press or audiovisual communications undertaking, a doctor's surgery, or the practice of a notary, an attorney or a bailiff, the provisions of Articles 56-1, 56-2 or 56-3 of the Code of Criminal Procedure, as applicable, shall apply.

The minutes recording the search operation shall be drawn up on the spot by the Autorité des Marchés Financiers' investigators. An inventory of the exhibits and documents seized shall be appended thereto. The minutes and the inventory shall be signed by the AMF's investigators and the law enforcement officer, as well as the parties referred to in the fifth paragraph of this article; any refusal to sign shall be recorded in the minutes. If it proves difficult to make an inventory on the spot, the exhibits and documents seized shall be placed under seal. The occupant of the premises or his representative shall be informed that he may be present at the opening of the seals, which shall take place in the presence of the law enforcement officer; the inventory shall then be drawn up.

The presiding judge of the court of appeal shall hear appeals against the conduct of the search or seizure operations authorised pursuant to the first paragraph. The minutes and inventory drawn up upon completion of said operations shall indicate the means of, and time limit for, appeal. The parties shall not be required to appoint legal counsel. Under the rules laid down by the Code of Civil Procedure, the appeal must be lodged within fifteen days via a declaration handed in or sent to the court registry by registered mail or, with effect from 1 January 2009, by electronic means. Said time limit shall run from the date of handing in or delivery of the minutes of the inventory. Said appeal shall not have suspensive effect.

The order of the presiding judge of the court of appeal may be subject to an appeal on points of law under the rules laid down by the Code of Civil Procedure. The time limit for an appeal on points of law is fifteen days.

The order of the presiding judge of the court of appeal may be subject to an appeal on points of law under the rules laid down by the Code of Civil Procedure. The time limit for an appeal on points of law is fifteen days. As soon as they are drawn up, the originals of the minutes of the search and the inventory shall be sent to the judge who issued the order; a copy of said documents shall be sent to the occupant of the premises or to said occupant's representative or, in their absence, shall be sent by registered letter with confirmation of receipt to the occupant of the premises and, where relevant, to the individual indicated in the authorisation given in the order referred to in the first paragraph of this article who may have committed an offence described in Articles L. 465-1 and L. 465-2. If it cannot be thus notified, the order shall be delivered by a process server. Said documents shall indicate the means of, and time limit for, appeal.

Documents which are no longer needed for discovery of the truth shall be returned to the occupant of the premises.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 9, Art. 11 IV Official Journal of 2 August 2003*

*Amended by Order No. 2009-233 of 26 February 2009 Art. 1 Official Journal of 27 February 2009*

#### Subsection 4 Injunctions and emergency measures

*(Amended Art. 12 LSF 2003-706)*

Art. L. 621-13. The presiding judge of the Regional Court may, on a reasoned request from the Chairman or the Secretary General of the Autorité des Marchés Financiers, order the sequestration of the funds, securities, certificates or rights belonging to the individuals or entities the AMF is pursuing, regardless of who holds them. He shall rule via an order made in response to an ex parte application, it being incumbent on any interested party to refer the matter to him. He may likewise place a temporary ban on the business activity.

The presiding judge of the Regional Court may, on a reasoned request from the Chairman or the Secretary General of the Autorité des Marchés Financiers, order, on a summary basis, that an alleged perpetrator be required to make a payment into court.

He shall determine the amount of the sum to be paid into court, the time limit for retention thereof and its allocation.

In the event of the alleged perpetrator being placed under formal investigation, the investigating judge hearing the case shall order the total or partial release of the sum paid into court or the maintenance or raising thereof via a decision rendered pursuant to paragraph 11 of Article 138 of the Code of Criminal Procedure.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 12 I, II Official Journal of 2 August 2003*

Art. L. 621-14. - I. - The Board may, after giving the individual concerned an opportunity to present his explanations, order the cessation, in France and abroad, of all breaches of the obligations imposed by the laws or regulations or by professional rules intended to protect investors from insider dealing, price manipulation and dissemination of false information, and any other breach likely to undermine investor protection or the orderly operation of the market. Such decisions may be disclosed to the public.

The Board has powers identical to those referred to in the previous paragraph to deal with any failure to meet the obligations resulting from the laws or regulations intended to protect investors and the market from insider trading, price manipulation and dissemination of false information committed on French soil in connection with the financial instruments or assets referred to in paragraph II of Article L. 421-1 admitted to trading on a regulated market of another country which is a Member State of the European Community or party to the European Economic Area Agreement or in respect of which an application for admission to trading on such a market has been submitted.

II.- The Chairman of the Autorité des Marchés Financiers may ask the court to order the individual responsible for the practice detected to comply with the laws or regulations and end the irregularity or eliminate its effects.

Said request shall be brought before the presiding judge of the Regional Court of Paris ruling on a summary basis, whose decision shall be immediately enforceable. He may, even without consultation, take any protective measure and impose a



coercive fine payable to the Trésor Public for execution of his order.

If criminal proceedings are brought, the coercive fine, if one has been imposed, shall not be applied until a final decision is made on the merits of the public prosecution.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 12 I, Art. 13 Official Journal of 2 August 2003*

*Amended by Act No. 2005-842 of 26 July 2005 Art. 30 Official Journal of 27 July 2005*

*Amended by Act No. 2010-1249 of 22 October 2010 9 Official Journal of 23 October 2010*

#### Subsection 4 bis Administrative composition

*Subsection inserted by Act No. 2010-1249 of 22 October 2010 Art. 7 Official Journal of 23 October 2010*

**Art. L. 621-14-1.** – Where the investigation or inspection report drawn up by the units of the Autorité des Marchés Financiers indicates breaches committed by an entity referred to in subparagraph 9 of paragraph II of Article L. 621-9, of subparagraphs a) and b) of paragraph II of Article L. 621-15, with the exception of the entities referred to in subparagraphs 3, 5 and 6 of paragraph II of Article L. 621-9, and of the professional obligations referred to in Article L. 621-17, the AMF's Board may, when it notifies the complaints as provided for in the first sentence of the second subparagraph of paragraph I of Article L. 621-15, also send it a proposal for the opening of an administrative settlement procedure.

Said proposal shall suspend the time limit set in the second subparagraph of paragraph I of Article L. 621-15.

Any entity which has received a proposal for the opening of an administrative settlement procedure shall undertake, through an agreement entered into with the Secretary General of the Autorité des Marchés Financiers, to pay the Trésor Public a sum which shall not exceed the maximum amount of the fine that may be incurred under paragraph III of Article L. 621-15.

The agreement shall be submitted to the Board, and then, if it is validated by it, to the Enforcement Commission, which may decide to approve it. The agreement thus approved shall be made public.

Where an approved agreement is not reached or is not complied with, the notice of complaints shall be passed to the Enforcement Commission for implementation of Article L. 621-15.

The decisions of the Board and of the Enforcement Commission referred to in this Article are subject to the means of appeal provided for in Article L. 621-30.

A decree issued following consultation with the Conseil d'Etat determines the implementing provisions of this section.

*Inserted by Act No. 2010-1249 of 22 October 2010 Art. 7 Official Journal of 23 October 2010*

#### Subsection 5 Sanctions

*(Art.14 LSF 2003-706 and Subsection Number Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 82 Official Journal of 7 May 2005)*

**Art. L. 621-15. - I.** - The Board shall review the report of the AMF staff on the investigation or inspection, or the request submitted by the Chairman of the Autorité de Contrôle Prudentiel.

If the Board decides to initiate sanction proceedings, it shall notify the complaints to the individuals concerned and forward the statement of complaints to the Enforcement Commission, which shall appoint a rapporteur from among its members. The Enforcement Commission cannot hear a case based on acts that took place more than three years previously if no action seeking to uncover, declare or punish said acts was carried out during said period.

**A member of the Board, after examining the investigation or inspection report and taking part in the decision to initiate sanction proceedings, shall be invited to the hearing. He shall attend without voting rights. He may be assisted or represented by the Autorité des Marchés Financiers' staff and may submit observations in support of the complaints made and propose a sanction.**

**The Enforcement Commission may hear any AMF employee.**

In urgent cases, the Board may suspend the activities of the entities referred to in subparagraphs a) and b) of paragraph II against whom sanction proceedings are initiated.

If the Board sends the report referred to in the first paragraph to the Public Prosecutor, it may decide to make that fact public.

II.-Following an adversarial procedure, the Enforcement Commission may impose sanctions on the following entities:

a) Entities referred to in subparagraphs 1 to 8 and 11 to 17 of paragraph II of Article L. 621-9 for any breach of professional obligations established by laws, regulations or conduct of business rules approved by the AMF, without prejudice to the provisions of Article L. 612-39;

b) Individuals under the authority of, or acting on behalf of, an entity referred to in subparagraphs 1 to 8 and 11 to 17 of paragraph II of Article L. 621-9 for any breach of professional obligations established by laws, regulations or conduct of business rules approved by the AMF, without prejudice to the provisions of Article L. 612-39;

c) Whoever, in France or abroad, has engaged in or attempted to engage in insider dealing or has engaged in price manipulation, the dissemination of false information or any other violation referred to in the first subparagraph of paragraph I of Article L. 621-14, where such acts relate to:

- a financial instrument or an asset referred to in paragraph II of Article L. 421-1 admitted to trading on a regulated market or on a multilateral trading facility which is subject to the laws and regulations intended to protect investors from insider dealing, price manipulation and the dissemination of false information, or for which an application for admission to trading on such markets has been submitted, as provided for in the General Regulation of the Autorité des Marchés Financiers;

- a financial instrument linked to one or more instruments indicated in the previous paragraph;

d) Whoever, in France, has engaged in or attempted to engage in insider dealing or has engaged in price manipulation, the dissemination of false information or any other violation referred to in the last subparagraph of paragraph I of Article L. 621-14, where such acts relate to:

- a financial instrument or an asset referred to in paragraph II of Article L. 421-1 admitted to trading on a regulated market of another Member State of the European Union or party to the European Economic Area Agreement or for which an



application for admission to trading on such a market has been submitted;

- a financial instrument linked to one or more instruments indicated in the previous paragraph;

e) Whoever, in France or abroad, has engaged in or attempted to engage in the dissemination of false information in connection with the issuance of securities.

### III.-The sanctions applicable are:

a) For the entities referred to in subparagraphs 1 to 8, 11, 12 and 15 to 17 of paragraph II of Article L. 621-9, a warning, a reprimand, or a temporary or permanent ban on providing some or all of the services previously provided and removal from the register referred to in Article L. 546-1. In lieu of, or in addition to, said sanctions, the Enforcement Commission may also impose a fine of up to 100 million euros or ten times the amount of any profit made. The money shall be paid into the guarantee fund to which the sanctioned entity is affiliated or, failing that, to the Trésor Public;

b) For individuals acting under the authority or on behalf of an entity referred to in subparagraphs 1 to 8, 11 and 17 of paragraph II of Article L. 621-9, a warning, a reprimand, a temporary suspension or withdrawal of their professional licence, and a temporary or permanent ban on conducting some or all of their business activities. In lieu of, or in addition to, said sanctions, the Enforcement Commission may also impose a fine of up to 15 million euros or ten times the amount of any profit made in the case of the practices referred to in subparagraphs c) and d) of paragraph II, or, in other cases, up to 300,000 euros or five times the amount of any profit made. The money shall be paid into the guarantee fund to which the entity on whose authority or behalf the sanctioned individual was acting is affiliated; failing that, the money shall be paid to the Trésor Public;

c) For entities other than those referred to in paragraph II of Article L. 621-9 who perpetrate acts referred to in subparagraphs c) and d) of paragraph II, fines of up to 100 million euros or ten times the amount of any profit made. The money shall be paid to the Trésor Public.

The amount of the sanction must be commensurate with the seriousness of the violations and any advantages or profits gained from said violations.

The guarantee fund referred to in subparagraphs a) and b) may, as provided for in its bylaws and subject to a maximum amount of 300,000 euros per annum, allocate a portion of the revenue it receives from the fines imposed by the Enforcement Commission to educational actions in the financial sphere.

III bis- Under the terms laid down in a decree issued following consultation with the Conseil d'Etat, the disqualification of a member of the Enforcement Commission shall be decided at the request of the respondent if there is good reason to question the impartiality of said member.

IV.- The Enforcement Commission rules on the basis of a reasoned decision. The rapporteur shall leave the chamber. No sanction may be imposed unless the respondent or his representative has been heard or, failing that, duly summoned.

IV bis.- The Enforcement Commission's hearings are held in public.

However, without consultation or at the request of the respondent, the Chairman of the session hearing the case may conduct all or part of the proceedings in camera for the sake of public order, national security or if a public hearing would compromise business secrecy or any other legally-protected secret.

V.- The Enforcement Commission's decision shall be made public in the publications, journals or media that it indicates, in a format commensurate with the offence committed and the sanction imposed. The cost thereof shall be borne by the entities sanctioned. However, where its publication could seriously disrupt the financial markets or cause undue damage to the parties involved, the Commission's decision may prohibit its publication.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 14 I, II and 46 VII Official Journal of 2 August 2003*

*Amended by Order No. 2005-429 Art. 83 Official Journal of 7 May 2005*

*Amended by Act No. 2005-842 of 26 July 2005 Art. 30 Official Journal of 27 July 2005*

*Amended by le decree No. 2005-1564 of 15 December 2005 Art. 14 Official Journal of 16 December 2005*

*Amended by Order No. 2006-344 of 23 March 2006 Art. 10 Official Journal of 24 March 2006*

*Amended by Act No. 2006-1770 of 30 December 2006 Art. 64 IV Official Journal of 31 December 2006*

*Amended by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*Amended by Act No. 2008-776 of 4 August 2008 Art. 160 and 161 Official Journal of 5 August 2008*

*Amended by Order No. 2009-80 of 22 January 2009 Art. 6 Official Journal of 23 January 2009*

*Amended by Act No. 2009-526 of 12 May 2009 Art. 138 Official Journal of 13 May 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 4, 6, 24 and 36 Official Journal of 23 October 2010*

Art. L. 621-15-1. If a complaint notified pursuant to the second subparagraph of paragraph I of Article L. 621-15 is likely to constitute an offence referred to in Articles L. 465-1 and L. 465-2, the Board shall immediately forward the investigation or inspection report to the Public Prosecutor for the Regional Court of Paris.

Where the Public Prosecutor for the Regional Court of Paris decides to prosecute on the basis of the facts thus received, he shall inform the Autorité des Marchés Financiers thereof without delay.

The Public Prosecutor for the Regional Court of Paris may send the Autorité des Marchés Financiers, as a matter of routine or at the latter's request, a copy of any document from proceedings relating to the facts thus received.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 14 III Official Journal of 2 August 2003*

Art. L. 621-15-2. – Where an institution referred to in Article L.370-1 of the Insurance Code which offers transactions referred to in Articles L.3334-1 to L.3334-9 and L.3334-11 to L.3334-16 of the Labour Code has violated a provision referred to in the second paragraph of Article L.370-2 of the Insurance Code, the Autorité des Marchés Financiers, on its own initiative or on a referral from the competent authorities, shall notify said offence without delay to the competent authority of the State in which the institution is approved, and shall request it, in cooperation with said supervisory authority, to take the necessary measures to put an end to the violation.

If the violation persists after two months have elapsed since such notification, the Autorité des Marchés Financiers may initiate sanction proceedings against the institution as provided

for in Article L.621-15. The sanctions applicable shall be those referred to in Article L.621-15 (III, a).

The Autorité des Marchés Financiers may decide to defer the initiation of sanction proceedings until expiry of a period allotted to the institution for taking the necessary measures to put an end to the violation.

*Inserted by Order No. 2006-344 of 23 March 2006 Art. 10 Official Journal of 24 March 2006*

Art. L. 621-16. – Where the Enforcement Commission of the Autorité des Marchés Financiers has imposed a financial penalty which has become final before the criminal court judge has given a final ruling on the same facts or related facts, the latter may order that the financial penalty be set off against the fine he imposes.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 14 I, Art. 46 III 29 Official Journal of 2 August 2003*

Art. L. 621-16-1. – **Where a prosecution is instituted** pursuant to Articles L. 465-1 and L. 465-2, the Autorité des Marchés Financiers may bring an independent action for damages. However, it cannot in regard to the same entity and the same facts, concurrently exercise the disciplinary powers it holds according to this code and the right to take civil action.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 16 Official Journal of 2 August 2003*

Art. L. 621-17. – Any violation by the financial investment advisors described in Article L. 541-1 of the laws, regulations and professional obligations which concern them shall incur penalties imposed by the Enforcement Commission pursuant to paragraph I, subparagraphs a) and b) of paragraph III, and paragraphs IV and V of Article L. 621-15.

The amount of the penalty must be commensurate with the seriousness of the breaches committed and any advantages or profits derived from said breaches.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 14 I, Art. 56 Official Journal of 2 August 2003*

Art. L. 621-17-1. – Any breach by individuals or legal entities producing or disseminating investment recommendations intended for the public within the framework of their business activities **or by individuals or legal entities who/which carry out or disseminate research work or produce or disseminate other information recommending or suggesting an investment strategy for the assets referred to in paragraph II of Article L. 421-1, intended for distribution channels or the public**, of the rules laid down in paragraph IX of Article L. 621-7 shall incur the sanctions imposed by the Enforcement Commission pursuant to the terms laid down in Article L. 621-15.

*Inserted by Act No. 2005-842 of 26 July 2005 Art. 29 Official Journal of 27 July 2005*

*Amended by Act No. 2010-1249 of 22 October 2010 9 Official Journal of 23 October 2010*

## Subsection 6 Declaration of suspect transactions

*Subsection inserted by Article 1 of Act No. 2005-811 of 20 July 2005 Official Journal of 21 July 2005 Numbering changed by Act No. 2005-1564 of 15 December 2005 Art. 17 Official Journal of 16 December 2005*

Art. L. 621-17-2. – Credit institutions, investment firms and members of the regulated markets not providing investment services are required to declare to the Autorité des Marchés Financiers without delay any transaction in the financial instruments or assets referred to in paragraph II of Article L. 421-1 carried out for own account or for third parties, if they have reason to suspect that it may constitute insider dealing or price manipulation within the meaning of the General Regulation of the Autorité des Marchés Financiers.

The financial instruments referred to in the first paragraph are the financial instruments admitted to trading on a regulated market or on a multilateral trading facility which is subject to the laws and regulations intended to protect investors from insider dealing, price manipulation and the dissemination of false information, or for which an application for admission to trading on such markets has been submitted, as provided for in the General Regulation of the Autorité des Marchés Financiers, as well as the financial instruments which are linked to them.

*Inserted by Act No. 2005-811 of 20 July 2005 Art.1 Official Journal of 21 July 2005*

*Amended by Order No. 2007-544 of 12 April 2007 - Art. 5 JORF 13 April 2007*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 9 and 24 Official Journal of 23 October 2010*

Art. L. 621-17-3. Where the Autorité des Marchés Financiers sends certain facts or information to the Public Prosecutor for the Regional Court of Paris pursuant to Articles L. 621-15-1 and L. 621-20-1, the declaration referred to in Article L. 621-17-2, which the Public Prosecutor is informed of, shall not be included in the case file.

*Inserted by Act No. 2005-811 of 20 July 2005 Art.1 Official Journal of 21 July 2005*

Art. L. 621-17-4. The General Regulation of the Autorité des Marchés Financiers specifies the circumstances in which the declaration referred to in Article L. 621-17-2 shall be made.

The declaration may be written or verbal. In the latter case, the Autorité des Marchés Financiers shall request written confirmation thereof.

The declaration must contain:

1 A description of the transactions indicating in particular the type of order and the trading method used;

2 The reasons that give rise to the suspicion that the declared transactions may involve insider dealing or price rigging;

3 The means of identifying the entities or individuals on behalf of whom the transactions were carried out and any others involved in them;

4 An indication of whether the transactions were carried out for own account or for third parties;

5 Any other relevant information concerning the declared transactions.

Where some of said elements are unavailable when the declaration is made, the reasons referred to in paragraph 2 must be indicated therein at least. The remaining information must be sent to the Autorité des Marchés Financiers as soon as it becomes available.

*Inserted by Act No. 2005-811 of 20 July 2005 Art.1 Official Journal of 21 July 2005*

Art. L. 621-17-5. – Any senior manager or employee of the entities referred to in Article L. 621-17-2 of this code who informs anyone, and in particular the individuals, entities or parties associated with those on behalf of whom the declared transactions were carried out, of the declaration referred to in said article or who discloses information concerning its outcome, shall incur the penalties provided for in Article 226-13 of the Criminal Code.

*Inserted by Act No. 2005-811 of 20 July 2005 Art.1 Official Journal of 21 July 2005*

Art. L. 621-17-6. Without prejudice to Article 40 of the Code of Criminal Proceedings, to Articles L. 621-15-1, L. 621-17-3 and L. 621-20-1 of this code and to the exercise of the powers invested in the Autorité des Marchés Financiers, the AMF and all of its members, the experts appointed to the consultative commissions referred to in paragraph III of Article L. 621-2, and the members of its staff, are prohibited from disclosing the information gathered pursuant to Article L. 621-17-2. If the Autorité des Marchés Financiers enlists the services of the entities and individuals referred to in Article L. 621-9-2, said prohibition shall extend to them, and likewise to their senior managers and employees.

The fact of a member of the Autorité des Marchés Financiers, an expert appointed to the consultative commissions referred to in paragraph III of Article L. 621-2, a member of its staff or an employee disclosing the content of the declaration or the identity of the entities to which it relates shall incur the penalties stipulated in Article L. 642-1. If the Autorité des Marchés Financiers enlists the services of the persons referred to in Article L. 621-9-2, this prohibition shall extend to them, and likewise to their senior managers and employees.

Where transactions covered by the declaration come under the jurisdiction of the competent authority of another Member State of the European Community or party to the European Economic Area Agreement, the Autorité des Marchés Financiers shall send the declaration to said authority without delay, along with any additional information provided by the declarant at said authority's request, as provided for in Article L. 632-16.

*Inserted by Act No. 2005-811 of 20 July 2005 Art.1 Official Journal of 21 July 2005*

*Amended by Order No. 2007-1490 of 18 October 2007 Art. 5 Official Journal of 19 October 2007*

Art. L. 621-17-7. – No proceedings founded on Article 226-13 of the Criminal Code may be brought in respect of transactions covered by the declaration referred to in Article L. 621-17-2 against senior managers or employees of the entities referred to therein who made said declaration in good faith.

No action for civil damages may be brought against an entity referred to in Article L. 621-17-2, its senior managers or its employees who made said declaration in good faith.

Barring any fraudulent collusion with the initiator of the transaction covered by the declaration, the declarant is released from all liability: no criminal proceedings may be brought against its senior managers or its employees pursuant to Article L. 465-1 or to the first paragraph of Article L. 465-2 of this code or to Articles 321-1 to 321-3 of the Criminal Code, and no administrative sanction proceedings may be brought against them for facts associated with insider dealing or price rigging.

The provisions of this article shall apply even if proof of the culpable or criminal nature of the facts giving rise to the declaration is not furnished or if said facts result in a decision to acquit or dismiss without any penalty being imposed by the

Autorité des Marchés Financiers or by the competent authority referred to in the third paragraph of Article L621-17-6.

*Inserted by Act No. 2005-811 of 20 July 2005 Art.1 Official Journal of 21 July 2005*

## Subsection 7 Other competences

*Subsection Number Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 82 Official Journal of 7 May 2005*

*Numbering changed by Act No. 2005-1564 of 15 December 2005 Art. 17 Official Journal of 16 December 2005*

Art. L. 621-18. – The Autorité des Marchés Financiers shall ensure that the disclosures required by the laws or regulations are regularly made by the issuers referred to in Article L. 451-1-2.

It shall check the information that said issuers disclose. For which purpose it may require the issuers, the entities which control them or are controlled by them and their statutory auditors or other auditors to provide all relevant documents and information.

It may order said issuers to make amending or additional disclosures if any inaccuracies or omissions are found in the documents made public. If the issuers concerned should fail to comply with said order, the Autorité des Marchés Financiers may, after discussion with the issuer, produce such amending or additional documents itself.

The Autorité des Marchés Financiers may make public the observations it makes to an issuer or any other information it considers necessary.

The costs occasioned by the disclosures referred to in the two previous paragraphs shall be met by the issuers concerned.

*Amended by Act No. 2001-420 of 15 May 2001 Art. 3 Official Journal of 16 May 2001*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 46 V 1 Official Journal of 2 August 2003*

*Amended by Act No. 2005-842 of 26 July 2005 Art. 32 Official Journal of 27 July 2005*

Art. L. 621-18-1. – At the request of one or more investment service providers or of an investment service providers' professional body, the Autorité des Marchés Financiers may, after consultation with the Banque de France, certify model contracts for financial instrument transactions.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 46 III 30 and V, 1, 2 or 3 Official Journal of 2 August 2003*

Art. L. 621-18-2. – I. - The individuals referred to in subparagraphs a) to c) shall notify the Autorité des Marchés Financiers of all acquisitions, sales, subscriptions and exchanges of a company's shares and the transactions involving the financial instruments linked to them, and the AMF shall make them public, where such transactions are carried out by:

a) The members of the Board of Directors, the Executive Board or the Supervisory Board, or the general manager, sole general manager, acting general manager or manager of said company;

b) Any other individual who, within the meaning of the General Regulation of the Autorité des Marchés Financiers, is empowered to make management decisions within the issuer regarding its positioning and strategy and also has regular access to privileged information which directly or indirectly concerns said issuer;

c) Individuals having close personal links, as defined in a decree issued following consultation with the Conseil d'Etat, with the individuals referred to in subparagraphs a) and b).

The individuals referred to in subparagraphs a) to c) shall be required to provide the issuer with a copy of the information sent to the Autorité des Marchés Financiers pursuant to the first paragraph. The General Regulation of the Autorité des Marchés Financiers specifies how said information shall be provided to the issuer, and also the way in which the General Meeting of shareholders shall be informed of the transactions referred to in this article.

Paragraph I shall apply to the transactions relating to the shares, and the financial instruments linked to them, of any company whose shares are admitted to trading on a regulated market having its registered office in France or outside the European Economic Area which is subject to the supervision of the Autorité des Marchés Financiers with regard to compliance with the obligation to provide information referred to in Article L. 451-1-1.

II. — The Autorité des Marchés Financiers may, in the circumstances and under the terms determined in its General Regulation, provide for the rules referred to in paragraph I to apply also to the financial instruments traded on any market in financial instruments which is not a regulated market, where the entity managing said market so requests.

**III. — The General Regulation of the Autorité des Marchés Financiers may also determine the obligations to make declarations concerning the transactions carried out in the assets referred to in paragraph II of Article L. 421-1. It also specifies the entities responsible for so doing.**

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 122 Official Journal of 2 August 2003*

*Amended by Act No. 2005-811 of 20 July 2005 Art.3 Official Journal of 21 July 2005*

*Amended by Order No. 2009-80 of 22 January 2009 Art. 6 Official Journal of 23 January 2009*

*Amended by Act No. 2009-526 of 12 May 2009 Art. 138 Official Journal of 13 May 2009*

*Amended by Act No. 2010-1249 of 22 October 2010 9 Official Journal of 23 October 2010*

Art. L. 621-18-3. - Legal entities having their registered office in France whose financial securities are admitted to trading on a regulated market shall make public the information required under the sixth, seventh and ninth paragraphs of Article L. 225-37 of the Commercial Code and under the seventh, eighth and tenth paragraphs of Article L. 225-68 and also under Article L. 226-10-1 of said code in circumstances determined in the General Regulation of the Autorité des Marchés Financiers. Each year, the AMF shall draw up a report on the basis of said information and may approve any recommendation it deems useful.

The Autorité des Marchés Financiers may, in the circumstances and under the terms determined in its General Regulation, provide for the obligation referred to in the first paragraph to apply also to companies having their registered office in France whose financial securities are offered to the public on a multilateral trading system which abides by the laws or regulations intended to protect investors from insider dealing, price rigging and the dissemination of false information, where the entity managing said market so requests.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 122 Official Journal of 2 August 2003*

*Amended by Act No. 2006-1770 of 30 December 2006 Art. 62 Official Journal of 31 December 2006*

*Inserted by Act No. 2008-649 of 3 July 2008 Art. 30 Official Journal of 4 July 2008*

*Amended by Order No. 2009-80 of 22 January 2009 Art. 6 Official Journal of 23 January 2009*

Art. L. 621-18-4. — **I.** Any issuer whose financial instruments are admitted to trading on a regulated market or are the subject of an application for admission to trading on such a market shall compile, update and keep available to the Autorité des Marchés Financiers, as provided for in its General Regulation, a list of the individuals working for it who have access to privileged information relating directly or indirectly to said issuer, and of third parties acting for it or on its behalf, who have access to said information in connection with their business dealings with said issuer.

In the same way, said third parties shall compile, update and keep available to the Autorité des Marchés Financiers a list of the individuals working for them who have access to privileged information relating directly or indirectly to said issuer, and of third parties acting for them or on their behalf, who have access to the same information in connection with their business dealings with said issuer.

**II. — The General Regulation of the Autorité des Marchés Financiers may also determine the terms applicable to the obligations to compile, update and keep available lists of individuals having access to privileged information relating to assets referred to in paragraph II of Article L. 421-1. It also specifies the individuals responsible for so doing.**

*Inserted by Act No. 2005-811 of 20 July 2005 Art.3 Official Journal of 21 July 2005*

*Amended by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*Amended by Act No. 2010-1249 of 22 October 2010 9 Official Journal of 23 October 2010*

Art. L. 621-19. — The Autorité des Marchés Financiers is authorised to deal with claims from any interested party relating to matters within its competence and to resolve them appropriately. **Where the conditions so permit, it proposes a friendly settlement of the disputes submitted to it, via arbitration or mediation.**

A referral to the Autorité des Marchés Financiers seeking extrajudicial settlement of a dispute shall suspend limitation of any civil or administrative action. Said limitation shall resume when the Autorité des Marchés Financiers announces the close of the mediation procedure.

The Autorité des Marchés Financiers cooperates with its foreign counterparts to facilitate extrajudicial settlement of cross-border disputes.

It may formulate proposals for amendments to the laws and regulations concerning the information provided to the holders of financial instruments and to the public, the markets in financial instruments **and in assets referred to in paragraph II of Article 421-1** and the status of the investment service providers. **Said report presents, in particular, the changes to the regulatory framework of the European Union applicable to the financial markets and reviews the cooperation with the regulatory authorities of the European Union and of the other Member States.**

Each year, it draws up a report to the President of the Republic and to Parliament which is published in the Official Journal of the French Republic.



The Chairman of the Autorité de Contrôle Prudentiel shall be heard by the Finance Commissions of the two Assemblies if they so request and may ask to be heard by them.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 17, Art. 46 V 1 Official Journal of 2 August 2003*

*Amended by LSF 2003-706 Art. 46, V, 1, 2 or 3*

*Amended by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 3 and 9 Official Journal of 23 October 2010*

Art. L. 621-20. - For the purposes of the provisions falling within the scope of the competence of the Autorité des Marchés Financiers, the civil, criminal or administrative courts may call upon its Chairman or his representative to file conclusions and develop them verbally before them without prejudice to the provisions of Article L. 466-1.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 18 I Official Journal of 2 August 2003*

Art. L. 621-20-1. - If, in the performance of its duties, the Autorité des Marchés Financiers has knowledge of a crime or an offence, it must inform the Public Prosecutor thereof without delay and send him all relevant information, statements of offence and other documents.

Without prejudice to the provisions of the third paragraph of Article L. 632-16, the Public Prosecutor may obtain from the Autorité des Marchés Financiers all the information it holds in connection with the performance of its duties. Information may not be withheld from him on grounds of professional secrecy.

*Inserted by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 18 II Official Journal of 2 August 2003*

*Amended by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

## Subsection 8

### Cooperation with the Commission de Régulation de l'Énergie (Energy Regulation Commission)

**Art. L. 621-21. - I. - The Autorité des Marchés Financiers and the Commission de Régulation de l'Énergie cooperate with each other. They send each other the information that is conducive to the performance of their respective duties.**

The Autorité des Marchés Financiers may seek the opinion of the Commission de Régulation de l'Énergie on any matter within the scope of its competence.

**II. - Where a matter is referred to it by the Commission de Régulation de l'Énergie pursuant to Article 39-1 of Act No. 2000-108 of 10 February 2000 relating to the modernisation and development of the public electricity service, the Autorité des Marchés Financiers shall keep the Commission de Régulation de l'Énergie informed of the investigation's progress. The Commission de Régulation de l'Énergie may ask the Autorité des Marchés Financiers to forward to it all the information relating to the case which may be relevant to the performance of its duties.**

**III. - As an exception to the provisions of Article L. 631-1, the Autorité des Marchés Financiers may send the Commission de Régulation de l'Énergie information that is covered by professional secrecy.**

**The information gathered pursuant to paragraphs I and II is covered by the professional secrecy in force under the conditions applicable to the institution which provided it and the recipient institution.**

**Said information may be used by the authorities referred to in paragraphs I and II only in the performance of their duties, unless the authority which provided said information agrees otherwise.**

*Repealed by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*Reinserted by Act No. 2010-1249 of 22 October 2010 Art. 9 Official Journal of 23 October 2010*

## Section 5 Relations with statutory auditors

*(LSF 2003-706 Art. 113)*

Art. L. 621-22. - I. - The Autorité des Marchés Financiers shall be informed of the proposals for the appointment or the reappointment of the statutory auditors of entities whose financial securities are admitted to trading on a regulated market and may make any observation it deems necessary concerning said proposals. Said observations shall be made known to the General Meeting or the body responsible for making the appointment, and to the professional concerned.

II. - It may ask the statutory auditors of entities whose financial securities are admitted to trading on a regulated market for any information on the entities or individuals that/who control them.

The statutory auditors of the entities referred to in the previous paragraph shall inform the AMF of any fact or decision which justifies an intention on their part to refuse to certify the accounts.

III. - The statutory auditors of entities whose financial securities are admitted to trading on a regulated market may raise questions with the Autorité des Marchés Financiers concerning any matter encountered in the performance of their duties which is likely to have an effect on the entity's financial information.

IV. - The statutory auditors of companies whose financial securities are admitted to trading on a regulated market shall send the Autorité des Marchés Financiers a copy of the document sent to the Chairman of the Board of Directors or of the Executive Board pursuant to the second paragraph of Article L. 234-1 of the Commercial Code. They shall also send said authority the conclusions of the report which they intend to present to the General Meeting pursuant to Articles L. 823-12 and L.822-15 of said code.

V.- Statutory auditors are released from professional secrecy, and shall therefore not incur liability, in respect of information provided pursuant to the obligations and formalities stipulated in this article and in Article L. 621-18.

The provisions of this article shall apply to the statutory auditors of entities whose financial securities are offered to the public on a multilateral trading facility which abides by the laws or regulations intended to protect investors from insider dealing, price rigging and the dissemination of false information.

VII. - The provisions referred to in paragraphs III and V of this article shall apply to statutory auditors who carry out assignments in connection with public offers. The Autorité des Marchés Financiers may ask the statutory auditors for any information on the entities they control, where said entities make an offer to the public.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 113 1, 2 and Art. 116 Official Journal of 2 August 2003*

*Amended by Act No. 2005-842 of 26 July 2005 Art. 32 Official Journal of 27 July 2005*

*Amended by Order No. 2005-1126 of 8 September 2005 Art. 22 Official Journal of 9 September 2005*

*Amended by Order No. 2009-80 of 22 January 2009 Art. 6 Official Journal of 23 January 2009*

Art. L. 621-23. – The statutory auditors of portfolio management companies are released from professional secrecy in regard to the Autorité des Marchés Financiers.

The statutory auditors are required to inform the Autorité des Marchés Financiers as soon as possible of any fact or decision concerning a portfolio management company which they have become aware of in the performance of their duties and which could:

1. Constitute a violation of the laws or regulations applicable to said company and be likely to have a significant impact on its financial situation, profits or assets;

2. Jeopardise its continued exploitation;

3. Give rise to the issuing of reservations or a refusal to certify the accounts.

The same obligation shall apply to facts and decisions which they may become aware of in the performance of their duties relative to a parent company or subsidiary of a company referred to above.

The statutory auditors shall not incur liability for information given or facts disclosed in the performance of their duties or under the obligations imposed by this article.

The Autorité des Marchés Financiers may also send the statutory auditors of portfolio management companies the information they require to accomplish their mission. The information thus transmitted is covered by the professional secrecy rule.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 46 V 1, Art. 113 1 Official Journal of 2 August 2003*

Art. L. 621-24. – The same obligation shall apply to facts and decisions which they may become aware of in the performance of their duties relative to a parent company or subsidiary of a company referred to above.

Statutory auditors shall not incur liability for information given or facts disclosed in the performance of their duties or under the obligations imposed by this article.

The Autorité des Marchés Financiers may also send the statutory auditors of portfolio management companies the information they require to accomplish their mission. The information thus provided is covered by the professional secrecy rule.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 46, V, 1, 2 or 3 and Art. 113 3 Official Journal of 2 August 2003*

Art. L. 621-25. – The Autorité des Marchés Financiers may ask the statutory auditors of an investment service provider, of a market undertaking or of an intermediary authorised to provide custody or administration of financial instruments for any information concerning the application by said service provider, market undertaking or intermediary of the provisions of Book IV or Part III of Book V of this Code or of the General Regulation of the Autorité des Marchés Financiers relating to the conduct of business rules or the conditions applicable to the custody or administration of financial instruments.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 46, V, 1, 2 or 3 and Art. 113 3 Official Journal of 2 August 2003*

*Amended by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*(Art. L. 621-26 to Art. L. 621-29. Repealed by LSF 2003-706 Art. 48)*

## Section 6 Means of appeal

*(Numbering of section changed by LSF 2003-706 Art. 48)*

Art. L. 621-30. – Consideration of the appeals made against the individual decisions of the Autorité des Marchés Financiers other than those relating to the institutions, individuals and entities referred to in paragraph II of Article L. 621-9, including the sanctions imposed on them, shall come within the jurisdiction of the ordinary courts. Such appeals shall not have suspensive effect unless the court decides otherwise. In which case, the court hearing the appeal may order that enforcement of the contested decision be suspended if it is likely to give rise to manifestly excessive consequences.

**The decisions handed down by the Enforcement Commission may be appealed against by the individuals and legal entities sanctioned and by the Chairman of the Autorité des Marchés Financiers, with the agreement of the Board. Where an appeal is brought by an individual or legal entity sanctioned, the AMF's Chairman may lodge an appeal in the same way.**

The implementing provisions of this article are determined in a decree issued following consultation with the Conseil d'Etat.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 1, Art. 20, Art. 48 II 5 Official Journal of 2 August 2003*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 6 Official Journal of 23 October 2010*

## Section 7 Investment recommendations made or disseminated in the context of journalism

*Section Inserted by Act No. 2005-842 of 26 July 2005 Art. 29 Official Journal of 27 July 2005*

Art. L. 621-31. – The following are not subject to the rules laid down in the first paragraph of IX of Article L. 621-7 or to the penalties imposed by Article L. 621-17-1:

1. The following companies, in relation to their journalistic activities, where they belong to an association constituted as provided for in Article L. 621-32:

- publishers of press publications within the meaning of Act No. 86-897 of 1 August 1986 reforming the law applicable to the press;

- broadcasters of radio or television services within the meaning of Act No. 86-1067 of 30 September 1986 relating to freedom of communication;

- publishers of on-line public communications services within the meaning of Act No. 2004-575 of 21 June 2004 for confidence in the digital economy;

- press agencies within the meaning of Order No. 45-2646 of 2 November 1945 setting out provisional regulations for the press agencies;

2 Journalists, within the meaning of Articles L. 7111-3, L. 7111-4 and L. 7112-1 of the Labour Code, where they practice their profession in one or more of the undertakings referred to in paragraph 1.

*Inserted by Act No. 2005-842 of 26 July 2005 Art. 29 Official Journal of 27 July 2005*

Art. L. 621-32. – The association referred to in paragraph 1 of Article L. 621-31 shall be formed by the entities enumerated therein, pursuant to the Act of 1 July 1901 relating to partnership agreements. Only the entities in the categories enumerated in said paragraph 1 may join them.

Said association shall draw up conduct of business rules. Said rules shall lay down specific criteria intended to guarantee compliance by the association's members who make or disseminate investment recommendations intended for the public which relate to financial instruments admitted to trading on a regulated market, or to their issuer, with the obligations pertaining to fair presentation and disclosure of conflicts of interest pursuant to Commission Directive 2003/125/EC of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the fair presentation of investment recommendations and the disclosure of conflicts of interest.

The responsible editor or, failing that, the legal representative of the member company, shall ensure that the criteria laid down in the conduct of business rules are properly applied by the journalists working under his authority.

*Inserted by Act No. 2005-842 of 26 July 2005 Art. 29 Official Journal of 27 July 2005*

Art. L. 621-33. – The association referred to in Article L. 621-32 shall either automatically deal with facts likely to constitute a breach, by a member, of the conduct of business rules criteria referred to in that same article, or they shall be referred to it by the Autorité des Marchés Financiers.

As an exception to Articles 42 et seq of Act No. 86-1067 of 30 September 1986 relating to freedom of communication, where it has knowledge of a fact likely to constitute a breach by a company that broadcasts radio or television services, the Conseil Supérieur de l'Audiovisuel (Audiovisual High Council) shall immediately inform the Autorité des Marchés Financiers with the object of launching an investigation.

Where it deals with any fact indicated in the first paragraph which it has chosen to examine or which has been referred to it, the association shall invite the member companies concerned and their responsible editor or, failing that, their legal representative, to submit their observations. It may, upon completion of said adversary procedure, impose a penalty on said entities for any breach of the criteria laid down in the conduct of business rules.

*Inserted by Act No. 2005-842 of 26 July 2005 Art. 29 Official Journal of 27 July 2005*

Art. L. 621-34. – The association may impose one of the following disciplinary sanctions on the member companies or their responsible editor, or, failing that, on their legal representative, commensurate with the seriousness of the breach:

1. A warning;
2. A reprimand;

3 The compulsory insertion of a notice or a communiqué in the medium concerned;

4 The broadcasting of a communiqué.

The association may also temporarily or permanently exclude one of its members. This measure may be ordered only in cases in which the member concerned fails to implement a sanction pronounced against it or if it has been repeatedly sanctioned for breaches of the criteria stipulated in the conduct of business rules.

No sanction may be pronounced unless the entity suspected of committing a breach, or its representative, has been heard or, failing that, duly summoned.

The association shall rule within three months of opening the case. It shall inform the Autorité des Marchés Financiers of its decision within one month of pronouncing it. If no decision is pronounced within said three-month period, the association shall be deemed to have decided that there were no grounds for a sanction.

The association may publish its decision in the publications, journals or other media that it designates. The cost thereof shall be borne by the member sanctioned.

The formalities for implementing and administering the disciplinary proceedings referred to in the preceding paragraphs are set out in the association's articles of association.

*Inserted by Act No. 2005-842 of 26 July 2005 Art. 29 Official Journal of 27 July 2005*

Art. L. 621-35. – The association shall draw up a report each year that presents an assessment of its activities. It shall send said report to the Autorité des Marchés Financiers, which shall make its observations and recommendations on the association's activities in its annual report.

*Inserted by Act No. 2005-842 of 26 July 2005 Art. 29 Official Journal of 27 July 2005*

*(Chapter II Conseil des Marchés Financiers (Financial Markets Council) Repealed by LSF 2003-706 Art. 48)*

*(Art. L. 622-1 to L. 622-10, L.622-13 to L. 622-20-1 and L.622-25 Repealed by LSF 2003-706 Art. 48)*

*(Articles L. 622-11 and L. 622-12 become Articles L. 621-24 and L. 621-25 LSF 2003-706 Art. 113 V 3)*

*(Chapter III Conseil de Discipline de la Gestion Financière (Financial Management Disciplinary Council) Repealed by LSF 2003-706 Art. 48)*

*(Art. L. 623-1 to L. 623-4 and L.642-4 to L. 642-7 Repealed by LSF 2003-706 Art. 48)*

# PART III COOPERATION, EXCHANGE OF INFORMATION AND ADDITIONAL SUPERVISION OF THE FINANCIAL CONGLOMERATES

*Heading amended by Order No. 2004-1201 of 12 November 2004  
Art. 12 Official Journal of 16 November 2004 and by Order No. 2007-  
544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

## Chapter I Cooperation and exchange of information on French soil

*Heading amended by Order No. 2007-544 of 12 April 2007 Art. 5  
Official Journal of 13 April 2007*

### Section 1 Cooperation and exchanges of information between authorities

*Heading amended by Order No. 2007-544 of 12 April 2007 Art. 5  
Official Journal of 13 April 2007*

Art. L. 631-1. – I. – The Banque de France, the Autorité de Contrôle Prudentiel and the Autorité des Marchés Financiers cooperate among themselves. They send each other information which is relevant to the performance of their respective duties.

The Autorité de Contrôle Prudentiel, the Autorité des Marchés Financiers and the High Council of the Order of Statutory Auditors may also send each other information which is relevant to the performance of their respective duties.

II.- The authorities referred to in paragraph I, the deposit guarantee fund instituted by Article L. 312-4, the guarantee fund instituted by Article L. 423-1 of the Insurance Code, the compulsory indemnity insurance guarantee fund instituted by Article L. 421-1 of that same code, the joint guarantee fund instituted by Article L. 931-35 of the Social Security Code, the guarantee fund instituted by Article L. 431-1 of the Mutual Insurance Code, market undertakings and clearing houses are authorised to send each other information which is relevant to the performance of their respective duties.

III.- The information gathered pursuant to paragraphs I and II is covered by the professional secrecy in force under the conditions applicable to the institution which provided it and the recipient institution.

Said information may be used, by the authorities referred to in paragraph I, only in the performance of their duties and, by the other entities referred to in paragraph II, only for the purposes for which it was communicated to them, unless the institution which provided it agrees otherwise.

The authorities referred to in paragraph I may exchange information covered by professional secrecy only with the consent of the authority or entity which provided said information.

*Amended by Act No. 2001-420 of 15 May 2001 Art. 6 Official  
Journal of 16 May 2001*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 III 32 and  
46 VII Official Journal of 2 August 2003*

*Amended by le decree No. 2005-1564 of 15 December 2005  
Art. 14 Official Journal of 16 December 2005*

*Replaced by Order No. 2007-544 of 12 April 2007 Art. 5 Official  
Journal of 13 April 2007*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official  
Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 12  
Official Journal of 23 October 2010*

### Section 2 The Conseil de Régulation Financière et du Risque Systémique

*Heading amended by Order No. 2010-1249 of 22 October 2010  
Art. 1 Official Journal of 23 October 2010*

Art. L. 631-2. – The Conseil de Régulation Financière et du Risque Systémique (Financial Regulation and Systemic Risk Council) is composed of eight members:

1 The Minister for the Economy, as Chairman;

2 The Governor of the Banque de France, as Chairman of the Autorité de Contrôle Prudentiel, assisted by the Vice-Chairman of said authority;

3 The Chairman of the Autorité des Marchés Financiers;

4 The Chairman of the Autorité des Normes Comptables;

5 Three prominent individuals, chosen on account of their competence in monetary, financial or economic domains, appointed by the Minister for the Economy for a term of five years.

The members referred to in paragraphs 1 to 4 may arrange to be represented.

The Conseil shall meet at least twice each year when convened by its Chairman, and whenever necessary.

*Amended by Act No. 2001-420 of 15 May 2001 Art. 6 Official  
Journal of 16 May 2001*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 III 32 and  
46 VII Official Journal of 2 August 2003*

*Amended by le decree No. 2005-1564 of 15 December 2005  
Art. 14 Official Journal of 16 December 2005*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official  
Journal of 22 January 2010*

*Replaced by Act No. 2010-1249 of 22 October 2010 Art. 1  
Official Journal of 23 October 2010*

Art. L. 631-2-1. – Without prejudice to the respective competences of the institutions that its members represent, the Conseil de Régulation Financière et du Risque Systémique performs the following duties:

1 It ensures cooperation and exchange of information between the institutions that its members represent;

2 It examines the analyses of the situation of the sector and of the financial markets and evaluates the systemic risks they present, taking into consideration the opinions and recommendations of the European Systemic Risk Board;

3 It facilitates cooperation and the synthesis the work in progress to formulate the international and European standards applicable to the financial sector and may state any opinion or point of view that it deems necessary.

*Inserted by Act No. 2010-1249 of 22 October 2010 Art. 1 Official  
Journal of 23 October 2010*



**Art. L. 631-2-2. – In performing the duties described in Article L. 631-2-1, the Conseil de Régulation Financière et du Risque Systémique may hear representatives of the credit institutions, the investment firms, the insurance companies, the mutual societies and the provident institutions.**

**The Conseil de Régulation Financière et du Risque Systémique shall draw up a public annual report for submission to Parliament.**

*Inserted by Act No. 2010-1249 of 22 October 2010 Art. 1 Official Journal of 23 October 2010*

## Section 2 Board of Supervisory Authorities of Financial Sector Institutions

**Art. L. 631-2-3. – A Board of Supervisory Authorities of Financial Sector Institutions is established. Said Board is composed of the Governor of the Banque de France, the Chairman of the Autorité de Contrôle Prudentiel and the Chairman of the Autorité des Marchés Financiers or their representatives. It is chaired by the Minister for the Economy or his representative.**

The function of the Board of Supervisory Authorities is to facilitate information exchanges between the supervisory authorities of the financial groups which are at the same time engaged in lending, investment and insurance activities, and to raise any question of common interest relating to the coordination of the control of said groups.

The Board shall meet at least three times each year. It may also be consulted for advice by the Minister for the Economy, the Governor of the Banque de France, the Chairman of the Autorité de Contrôle Prudentiel and the Chairman of the Autorité des Marchés Financiers on any matter within the scope of its competence.

*Amended by Act No. 2001-420 of 15 May 2001 Art. 6 Official Journal of 16 May 2001*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 46 III 32 and 46 VII Official Journal of 2 August 2003*

*Amended by le decree No. 2005-1564 of 15 December 2005 Art. 14 Official Journal of 16 December 2005*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

## Chapter II Cooperation and exchange of information with other countries

*Heading amended by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

### Section 1 Provisions concerning supervision, inspections and investigations

*Section inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007 and Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

Subsection 1 Cooperation and exchanges of information with the authorities of the other Member States of the European Community or of other States party to the European Economic Area Agreement

*Subsection inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

**Art. L. 632-1. – As an exception to the provisions of Act No. 68-678 of 26 July 1968 relating to the communication of documents and information of an economic, commercial, industrial, financial or technical nature to foreign individuals or foreign legal entities, the Autorité de Contrôle Prudentiel and the Autorité des Marchés Financiers cooperate with the authorities of the other Member States of the European Union or of the other States party to the European Economic Area Agreement performing equivalent functions, as provided for in this chapter. Inter alia, they exchange with said authorities the information needed to perform their respective duties. Where an urgent situation likely to threaten the stability of the financial system of another Member State of the European Union or of another State party to the European Economic Agreement warrants it, they are also allowed to exchange any necessary information with the ministries of those States having responsibility for the financial sector, pursuant to the rules laid down by this article, Article L. 631-1 and Articles L. 632-2 to L. 632-4.**

The cooperation provided for in the first paragraph may not be refused on the grounds that the acts to which the inspection or the investigation relates do not contravene a legal or regulatory provision in force in France.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 19 Official Journal of 23 October 2010*

**Art. L. 632-2. – As an exception to the provisions of Act No. 68-678 of 26 July 1968 relating to the communication of documents and information of an economic, commercial, industrial, financial or technical nature to foreign individuals or foreign legal entities, the foreign counterparts of another Member State of the European Community or of another State party to the European Economic Area Agreement may require the cooperation of the Autorité de Contrôle Prudentiel or the Autorité des Marchés Financiers in connection with a monitoring action, an on-the-spot inspection or an investigation.**

In the same context, where the Autorité de Contrôle Prudentiel or the Autorité des Marchés Financiers receives a request concerning an on-the-spot inspection or an investigation, it shall respond by carrying it out itself, by allowing the requesting authority to carry it out directly, or by allowing statutory auditors or experts to carry it out.

Where it does not carry out the on-the-spot inspection or the investigation itself, the authority which made the request may be in attendance, if it so wishes.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

**Art. L. 632-3. – The Autorité de Contrôle Prudentiel and the Autorité des Marchés Financiers may use the information**

covered by professional secrecy which they receive solely in the performance of their duties.

A decree issued following consultation with the Conseil d'Etat determines the implementing provisions of this article.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007 and amended by the corrective order of 19 May 2007*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

Art. L. 632-4. – Notwithstanding the provisions of this chapter, the Autorité de Contrôle Prudentiel and the Autorité des Marchés Financiers may transmit to the European System of Central Banks or to the European Central Bank, acting in their capacity as monetary authorities, information covered by professional secrecy intended for the performance of their duties.

Notwithstanding the provisions of this chapter, the Banque de France, the Autorité de Contrôle Prudentiel and the Autorité des Marchés Financiers may transmit information covered by professional secrecy intended for the performance of their duties to other public authorities responsible for the supervision of payment systems and systems for the settlement and delivery of financial instruments.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 22 Official Journal of 23 October 2010*

Art. L. 632-5. – Where the Autorité de Contrôle Prudentiel or the Autorité des Marchés Financiers is invited to cooperate in an investigation, an on-the-spot inspection or a monitoring action pursuant to Article L.632-2, or in an exchange of information pursuant to Article L.632-1, it may refuse to comply with such a request only where the nature thereof is likely to undermine French sovereignty, security or public order, or if criminal proceedings have already been instituted in France on the basis of the same facts and against the same entities, or if said entities have already been sanctioned for the same facts by a final decision.

In the event of refusal, it shall inform the competent authority thereof.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Art. L. 632-6. - I.- Where the Autorité de Contrôle Prudentiel or the Autorité des Marchés Financiers has reasonable grounds for suspecting that acts which violate the provisions applicable to investment service providers, regulated markets or market undertakings have been committed in another Member State of the European Community or another State party to the European Economic Area Agreement by entities which are not subject to its supervision, it shall inform the competent authority of said other State thereof in the most detailed manner possible.

II.- Where the Autorité de Contrôle Prudentiel or the Autorité des Marchés Financiers is informed by an authority of another Member State of the European Community or of another State party to the European Economic Area Agreement that acts which violate the provisions applicable to investment service providers, regulated markets or market undertakings are likely to have been committed in Metropolitan France, the

overseas *départements*, Saint-Barthélemy or Saint Martin by an entity which is not subject to that authority's supervision, it shall take the appropriate measures. It shall communicate the results thereof to the competent authority which informed it and, to the fullest extent possible, shall inform it of any important events that occurred in the intervening period.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*Amended by Order No. 2008-698 of 11 July 2008 Art. 1 Official Journal of 16 July 2008*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

## Subsection 2 Cooperation and exchanges of information with the authorities of States which are not members of the European Community and not party to the European Economic Area Agreement

*Subsection inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

Art. L. 632-7. - I. - As an exception to the provisions of Act No. 68-678 of 26 July 1968 relating to the communication of documents and information of an economic, commercial, industrial, financial or technical nature to foreign individuals or foreign legal entities, the Autorité de Contrôle Prudentiel and the Autorité des Marchés Financiers may enter into cooperation agreements with the equivalent authorities of a country which is not a Member State of the European Community and not party to the European Economic Area Agreement which make provision, *inter alia*, for the exchange of information. As an exception to those same provisions, the Banque de France may enter into cooperation agreements with public authorities responsible for the supervision of payment systems and systems for the settlement and delivery of financial instruments which make provision, *inter alia*, for the exchange of information. The information communicated must be afforded guarantees of professional secrecy at least equal to those that the French authorities which are party to said agreements are subject to. Said exchange of information must be intended for the performance of said competent authorities' duties.

II.-The Autorité de Contrôle Prudentiel and the Autorité des Marchés Financiers may also enter into cooperation agreements that make provision, *inter alia*, for the exchange of information with authorities or nationals of a country which is not a Member State of the European Community and not party to the European Economic Area Agreement, which/who are:

a) Responsible for the supervision of credit institutions, payment institutions, other financial institutions and insurance companies and the financial markets;

b) Tasked with the management of court-ordered insolvency procedures relating to investment firms and any other similar procedure;

c) Tasked with conducting the statutory audit of the accounts of investment firms, other financial institutions, credit institutions, payment institutions and insurance companies within the purview of their supervisory functions, or their functions as managers of compensation schemes;

d) Responsible for the supervision of entities participating in the collective procedures of investment firms or in any other similar procedure;

e) Responsible for supervising the individuals and entities tasked with carrying out the statutory audit of the accounts of insurance companies, credit institutions, investment firms and other financial institutions, where the information

communicated is covered by guarantees of professional secrecy at least equal to those that the French authorities party to said agreements are subject to. Said exchange of information must be intended for the performance of said authorities' or entities' duties.

III.- Where it originates from an authority of another Member State of the European Community or another State party to the European Economic Area Agreement or a third-party country, the information may not be disclosed without the express consent of the authority which provided it and, where this is the case, only for the purposes for which its consent was given.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 15 Official Journal of 16 July 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 22 Official Journal of 23 October 2010*

### Subsection 3 Provisions specific to the Autorité des Marchés Financiers

*Subsection inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

Art. L. 632-8. – The Autorité des Marchés Financiers is the sole authority which may act as a point of contact for requests for exchanges of information or cooperation with the authorities of the other Member States of the European Union or of the other States party to the European Economic Area Agreement.

The Autorité des Marchés Financiers shall immediately communicate the information they require to perform their duties to the competent authorities of the other Member States of the European Union or of the other States party to the European Economic Area Agreement which have been designated as points of contact for the purposes of Paragraph 1 of Article 56 of Directive 2004/39/EC of 21 April 2004 on markets in financial instruments.

If the competent authority which has provided the information so requested at the time of communication, the Autorité des Marchés Financiers may disclose it only with said authority's express consent and only for the purposes for which its consent was given.

The Autorité des Marchés Financiers shall immediately forward the information received under this article, paragraph II of Article L. 612-44 and Articles L. 621-23 and L.632-7 to the Autorité de Contrôle Prudentiel. It shall forward it to other institutions or entities only with the express consent of the competent authorities which disclosed it and only for the purposes for which those authorities have given their consent, unless an urgent matter justifies so doing. In this latter case, the Autorité des Marchés Financiers shall immediately inform its counterpart authority which sent the information.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 12 Official Journal of 23 October 2010*

Art. L. 632-9. – Where the activities of a regulated market referred to in Article L.421-1 which has installed access devices in another Member State of the European Community or in another State party to the European Economic Area Agreement have acquired substantial importance there for the operation of the financial markets and investor protection, the Autorité des Marchés Financiers shall introduce appropriate cooperation arrangements with the competent authority of said State.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

The Autorité des Marchés Financiers may request information directly from investment service providers who are members of a regulated market referred to in Article L.421-1 and are not established in France. In such cases, it shall inform the competent authority of the Member State of the European Community or of the other State party to the European Economic Area Agreement which is their home State.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

Art. L. 632-11. – Where the Autorité des Marchés Financiers receives reports on transactions pursuant to Article L.533-9, it shall transmit such information to the competent authority of the market which is the most relevant in terms of liquidity for the financial instrument in question, where said market is located in another Member State of the European Community or in another State party to the European Economic Area Agreement.

Where the Autorité des Marchés Financiers receives reports on the transactions of a branch in Metropolitan France, in the overseas *départements* or in Saint-Barthélemy or Saint Martin of investment service providers having their registered office in another Member State of the European Community or in another State party to the European Economic Area Agreement, it shall forward them to the competent authority of the branch's home State. It shall be exempted from such transmission, however, if the latter authority indicates that it does not wish to receive them.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*Amended by Order No. 2008-698 of 11 July 2008 Art. 1 Official Journal of 16 July 2008*

## Section 2 Other provisions

*Section inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

### Subsection 1 Provisions specific to the Autorité de Contrôle Prudentiel relative to credit institutions, payment institutions and investment firms

*Subsection inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

Art. L. 632-12. – The on-the-spot inspections of the Autorité de Contrôle Prudentiel may be extended to the legal entities referred to in Article L. 612-26 located in another Member State of the European Community or in another State

party to the European Economic Area Agreement. The Commission requests the competent authorities of the other Member State of the European Community or of the other State party to the European Economic Area Agreement to carry out such inspections. With the permission of said authorities, it may designate representatives to carry out the inspections. Where it does not perform the inspection itself, the Autorité de Contrôle Prudentiel may participate therein, if it so wishes.

In order to effectively supervise an institution subject to its supervision, the Autorité de Contrôle Prudentiel may require staff, outsourced service providers or branches established in another Member State of the European Community or in another State party to the European Economic Area Agreement to send it all information relevant to the exercise of said supervision and, having duly informed the authority of that State which has competence for supervising credit institutions, payment institutions or investment firms, to have its representatives carry out an on-the-spot inspection of said institution's staff, outsourced service providers or branches.

Where the authorities of a Member State of the European Community or of another State party to the European Economic Area Agreement which have competence for supervising a credit institution, a payment institution or an investment firm wish, in specific cases, to verify information relating to one of the legal entities referred to in Article L. 612-26 located in France, the Autorité de Contrôle Prudentiel must comply with their request either by carrying out such verification itself or by allowing representatives of those authorities to carry it out. Where they do not carry out the verification themselves, the competent authorities which submitted the request may, if they so wish, participate therein.

As an exception to the provisions of Act No. 68-678 of 26 July 1968 relating to the communication of documents and information of an economic, commercial, industrial, financial, or technical nature to foreign individuals or foreign legal entities, the Autorité de Contrôle Prudentiel may, moreover, exchange any information pertinent to the execution of their inspections with the authorities of the other Member States of the European Union or of the other States party to the European Economic Area Agreement which are responsible for the supervision of the credit institutions, payment institutions, investment firms, other financial institutions and insurance companies.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*Amended by Order No. 2009-866 of 15 July 2009 Art. 15 Official Journal of 16 July 2009*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

Art. L. 632-13. – As an exception to the provisions of Act No. 68-678 of 26 July 1968 relating to the communication of documents and information of an economic, commercial, industrial, financial, or technical nature to foreign individuals or foreign legal entities, the Autorité de Contrôle Prudentiel may enter into bilateral agreements with the authorities of a State which is not a Member State of the European Community and not party to the European Economic Area Agreement which perform a role similar to that entrusted to the Autorité de Contrôle Prudentiel in France, provided that said authorities are themselves subject to professional secrecy, having as their object, concurrently or otherwise:

1. The extension of on-the-spot inspections to the foreign branches or subsidiaries of a credit institution, investment firm or a financial holding company governed by French law;

2. The carrying out by the Autorité de Contrôle Prudentiel, at the request of said foreign authorities, of on-the-spot

inspections in institutions subject to its supervision in France which are branches or subsidiaries of institutions subject to the supervision of said authorities. Said inspections may be carried out jointly with said foreign authorities;

3. The determination of the circumstances in which the Autorité de Contrôle Prudentiel may send, receive or exchange information relevant to the exercise of its powers and to those of the foreign authorities responsible for supervising credit institutions, investment firms, other financial institutions, insurance companies or financial markets.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

Art. L. 632-14. Inspections carried out by the Autorité de Contrôle Prudentiel within the scope of Articles L. 632-12 and L. 613-13 by representatives of a foreign authority with competence for supervising credit institutions must relate exclusively to compliance with the prudential management standards of the State concerned in order to enable the financial situation of banking or financial groups to be monitored. They must be the subject of a report to the Autorité de Contrôle Prudentiel, which is the only authority empowered to impose sanctions on the subsidiary or branch inspected in France.

To enable the inspections referred to in Articles L. 632-12 and L. 632-13 to be carried out, individuals who participate in the administration or the management of the credit institutions referred to in the previous paragraph, or who are employed by them, must comply with the requests of the representatives of the foreign banking supervisory authorities and cannot refuse to do so on grounds of professional secrecy.

The provisions of Article L. 632-5 shall apply to the activities covered by this Article.

Without prejudice to the remit of the Autorité des Marchés Financiers, the provisions of this article and of Articles L. 632-12 and L. 632-13 shall apply to investment firms and the investment departments of credit institutions.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

Art. L. 632-15. – As an exception to the provisions of Act No. 68-678 of 26 July 1968 relating to the communication of documents and information of an economic, commercial, industrial, financial or technical nature to foreign individuals or foreign legal entities, the Autorité de Contrôle Prudentiel may, beyond the scope of the agreements referred to in Articles L. 632-7 and L. 632-13, send information to the authorities of States which are not Member States of the European Union and not party to the European Economic Area Agreement which are responsible for the supervision of the entities referred to in subparagraphs 1 to 3 of paragraph I A of Article L. 612-2 and paragraphs 1 to 4 of Article L. 612-26 of this code, subject to reciprocity and provided that the information communicated is afforded guarantees of professional secrecy at least equal to those which the French authorities are subject to.

The provisions of paragraph III of Article L. 632-7 shall apply to the activities governed by this article and by Articles L. 632-12 and L. 632-13.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*Amended by Order No. 2007-1490 of 18 October 2007 Art. 5 Official Journal of 19 October 2007*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 12 Official Journal of 23 October 2010*



## Subsection 2 Provisions specific to the Autorité des Marchés Financiers

*Subsection inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

Art. L. 632-16. – The Autorité des Marchés Financiers may carry out monitoring, inspection and investigatory activities at the request of foreign authorities having similar powers. Where such activities are carried out on behalf of authorities of a country which is not a Member State of the European Community and not party to the European Economic Area Agreement, they shall be carried out subject to reciprocity.

As an exception to the provisions of Act No. 68-678 of 26 July 1968 relating to the communication of documents and information of a financial or technical nature to foreign individuals or foreign legal entities, the obligation of professional secrecy stipulated in paragraph II of Article L. 621-4 shall not hinder communication by the Autorité des Marchés Financiers of the information it holds, or which it gathers at their request, to foreign authorities which exercise similar powers and are bound by the same obligations of professional secrecy. Where said communication is made to authorities of a State which is not a Member State of the European Community and not party to the European Economic Area Agreement, it shall take place subject to reciprocity. In the performance of its duties, the Autorité des Marchés Financiers may also exchange confidential information relating to the obligations referred to in Articles L. 412-1, L.451-1-2 and L. 451-1-3 with entities to which said authorities have delegated the discharge of their obligations, provided that such entities are bound by the same obligations of professional secrecy. To this end, the Autorité des Marchés Financiers may enter into agreements which organise its relations with said delegated entities.

The provisions of Article L. 632-5 and of paragraph III of Article L. 632-7 shall apply to the activities governed by this article.

In addition to the agreements referred to in Article L. 632-7, for implementation of the preceding paragraphs the Autorité des Marchés Financiers may enter into agreements which organise its relations with foreign authorities exercising powers similar to its own.

The agreements referred to in Article L. 632-7 and in the preceding paragraph shall be approved by the Autorité des Marchés Financiers as provided for in Article L. 621-3.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

## Subsection 3 Miscellaneous provisions

*Subsection inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

Art. L. 632-17. – **The market infrastructures that disseminate or keep available to the Autorité des Marchés Financiers or to the Autorité de Contrôle Prudentiel information relating to transactions in financial instruments may communicate to their foreign counterparts and to the authorities which are the counterparts of the Autorité des Marchés Financiers or of the Autorité de Contrôle Prudentiel the information they**

**require to perform their duties, including information covered by professional secrecy, provided that said counterpart institutions are themselves subject to professional secrecy within a legislative framework that provides guarantees equivalent to those applicable in France and subject to reciprocity.**

Where said exchanges of information take place between the market infrastructures and the counterpart authorities of the Autorité des Marchés Financiers or of the Autorité de Contrôle Prudentiel, they shall be carried out as provided for in a cooperation agreement referred to in Article L. 632-7.

Within the framework of the supervision of the risks incurred by the members, said information may, inter alia, include the positions taken on the market, the margin deposits or the variation margins and their composition, as well as the margin calls.

A decree specifies the market infrastructures subject to these provisions.

*Inserted by Order No. 2007-544 of 12 April 2007 Art. 5 Official Journal of 13 April 2007*

*Replaced by Act No. 2010-1249 of 22 October 2010 Art. 8 Official Journal of 23 October 2010*

## Chapter III Additional supervision of financial conglomerates

*Title inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

### Section 1 Identification of financial conglomerates

*Section inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

Art. L. 633-1. – The Autorité de Contrôle Prudentiel and the Autorité des Marchés Financiers shall, in conjunction, where necessary, with the supervisory authorities of the regulated entities of the Member States of the European Union or other European Economic Area Member States, identify the groups that come within the scope of the additional supervision for financial conglomerates and shall exchange for said purpose all the information required for the performance of their respective duties.

Where a group has been identified as a financial conglomerate and the Autorité de Contrôle Prudentiel is designated as the coordinator of the additional supervision pursuant to the provisions of Article L. 633-2, it shall inform the group's leading entity thereof, or, failing that, the regulated entity which posts the highest balance sheet total in the group's most important financial sector. It shall also inform the competent authorities who approved the group's regulated entities and the competent authorities of the Member State of the European Union or other European Economic Area Member State in which the mixed financial holding company has its registered office, as well as the European Commission.

*Inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

*Amended by le decree No. 2005-1564 of 15 December 2005 Art. 14 Official Journal of 16 December 2005*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

## Section 2 Designation of the coordinator

*Section inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

Art. L. 633-2. - I. - The coordinator is the competent authority responsible for the coordination and provision of the additional supervision. After consultation with the competent authorities concerned and the financial conglomerate, it may determine the method to be used to calculate the additional requirements in terms of equity capital adequacy and decide not to include any particular entity in the calculation parameters of the additional requirements in terms of equity capital adequacy in certain cases specified in the regulations.

II.- The coordinator is the competent authority of one of the States party to the European Economic Area Agreement which meets criteria determined in the regulations.

*Inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

## Section 3 Duties of the coordinator

*Section Inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

Art. L. 633-3. – Where it is designated as coordinator, the Autorité de Contrôle Prudentiel is responsible, with regard to the additional supervision, for:

a) Coordination of the collection and dissemination of any information that is useful in the normal course of business and in emergency situations and, in particular, of any important information relating to the prudential supervision exercised by a competent authority pursuant to the sectoral rules;

b) The prudential supervision of a financial conglomerate and assessment of its financial situation.

c) Assessment of the application of the rules relating to equity capital adequacy, risk exposure and the transactions between the conglomerate's different entities pursuant to the provisions of Article L. 517-8 of this code and of Article L. 334-8 of the Insurance Code;

d) Assessment of the financial conglomerate's structure, organisation and internal auditing facilities;

e) Planning and coordinating the prudential activities, in cooperation with the competent authorities concerned.

*Inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

## Section 4 Cooperation and exchanges of information for the purposes of additional supervision

*Section inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

Art. L. 633-4. – Where the coordinator of a financial conglomerate is an authority of another Member State of the

European Union or a State party to the European Economic Area Agreement, it shall perform the duties indicated in Article L. 633-3 in regard to the entities established in France.

*Inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

Art. L. 633-5. – To facilitate provision of the additional supervision, the Autorité de Contrôle Prudentiel shall enter into coordination agreements with the competent authorities concerned, and, where necessary, with any other interested competent authority. Said agreements shall be published in the Official Journal of the French Republic. The may entrust additional assignments to the coordinator and specify the procedures to be followed for the additional supervision. They may also specify the arrangements for coordination with other competent authorities.

*Inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Art. L. 633-6. – The Autorité de Contrôle Prudentiel and, where necessary, the Autorité des Marchés Financiers, shall cooperate with the competent authorities responsible for supervising the regulated entities belonging to a financial conglomerate and, where said authorities do not provide such supervision, with the coordinator. The implementing provisions of this article are determined in the regulations.

*Inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

Art. L. 633-7. – In the performance of their respective duties, the competent authorities may exchange information relating to the regulated entities belonging to a financial conglomerate with the central banks of the Member States of the European Union or other States party to the European Economic Area Agreement, the European System of Central Banks and the European Central Bank.

*Inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

## Section 5 Provision of supervision

*Section inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

Art. L. 633-8. - Articles L. 612-24, L. 612-26 and L. 612-44 shall apply to all the entities located in a Member State of the European Union or another State party to the European Economic Area Agreement, regulated or otherwise, that belong to a financial conglomerate subject to the coordination of the Autorité de Contrôle Prudentiel.

*Inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

Art. L. 633-9. – As an exception to Act No. 68-678 of 26 July 1968 relating to the communication of documents and information of an economic, commercial, industrial, financial or technical nature to foreign individuals or foreign legal entities, any entity established in France which belongs to a

financial conglomerate having an authority of a European Union Member State or another State party to the European Economic Area Agreement as its coordinator shall be required to send the coordinator, at its request, any information relevant to the additional supervision.

*Inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

Art. L. 633-10. – Where the competent authorities of a European Union Member State or another State party to the European Economic Area Agreement wish, in specific cases, to verify the information relating to an entity established in France, regulated or otherwise, belonging to a financial conglomerate and referred to in Article L. 612-26, they shall ask the Autorité de Contrôle Prudentiel or, where applicable, the Autorité des Marchés Financiers, to have such verification carried out.

The Autorité de Contrôle Prudentiel or, where applicable, the Autorité des Marchés Financiers, shall initiate said verification by carrying it out itself, by allowing the authority which made the request to carry it out, or by allowing an auditor or an expert to do so.

Where it does not carry out the verification itself, the competent authority which made the request may participate therein if it so wishes.

*Inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

Art. L. 633-11. – For the purposes of the additional supervision provided for in this chapter, the Autorité de Contrôle Prudentiel may enter into the agreements referred to in Article L. 632-13 with the competent authorities of a State which is not party to the European Economic Area Agreement in order to ensure the supervision of any entity belonging to a financial conglomerate.

*Inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

*Amended by Order No. 2007-1490 of 18 October 2007 Art. 5 Official Journal of 19 October 2007*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 18 Official Journal of 22 January 2010*

## Section 6 Execution measures

*Section inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

Art. L. 633-12. - I. - If the Autorité de Contrôle Prudentiel, where it is designated as coordinator, notes that the regulated entities of a financial conglomerate are meeting the requirements laid down in Article L. 517-8 but their solvency could nevertheless be compromised, or that the transactions between the group's entities or the risk exposures undermine said regulated entities' financial situation, it may implement the powers invested in it by Section 1 of Chapter III of Part I of Book VI of this code against the mixed financial holding company.

II. - If the Autorité de Contrôle Prudentiel, where it is designated as coordinator, notes that one or more regulated entities or a mixed financial holding company of a financial conglomerate are not meeting the requirements laid down in Article L. 517-8 or Article L. 517-9, or have not complied with a recommendation, or have disregarded a warning, or failed to

meet any specific condition imposed or commitment made relative to the additional supervision, or have failed to comply with an injunction, it may take the following measures against the mixed financial holding company:

III. - The relevant sectoral authorities, including the Autorité de Contrôle Prudentiel, may use the powers to impose penalties conferred on them for the sectoral supervision of the regulated entities whose additional supervision is entrusted to them.

IV. - Where the coordinator is a competent authority of another European Union Member State or a State party to the European Economic Area Agreement, it may impose on a mixed financial holding company having its registered office in France the penalties stipulated in this article or the measures imposed by its own domestic law.

*Inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

Art. L. 633-13. – Where a regulated entity uses its membership of a financial conglomerate to totally or partially elude application of the sectoral rules applicable to it, the Autorité de Contrôle Prudentiel may use the powers referred to in Sections 5 to 7 of Chapter II and in Section 1 of Chapter III of Part I of Book VI.

Where a regulated entity referred to in the previous paragraph is an investment firm, the Autorité des Marchés Financiers may, without prejudice to the competence of the Autorité de Contrôle Prudentiel, use the powers referred to in subsections 3, 4 and 5 of Section IV of the sole Chapter of Part II of Book VI.

*Inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 82 and 109 Official Journal of 7 May 2005*

*Amended by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

## Section 7 Parent companies having their registered office outside the European Economic Area

*Section inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

Art. L. 633-14. – Where the regulated entities belonging to a group that conducts business in both the banking and investment services sector and the insurance sector have as their parent entity a company having its registered office in a State which is neither a Member State of the European Union nor a State party to the European Economic Area Agreement, the Autorité de Contrôle Prudentiel shall, where it meets the conditions for acting as coordinator laid down in Article L. 334-9, verify, on its own initiative or at the request of the parent entity or of a regulated entity approved in a Member State of the European Union or a State party to the European Economic Area Agreement, that said regulated entities are subject to additional supervision by a competent authority of the third country equivalent to that required under this subsection. Said authority shall consult the competent authorities concerned.

If no equivalent consolidated supervision exists, the competent authorities concerned shall designate a coordinator

and apply the provisions relating to additional supervision to those regulated entities in the same way.

In order to provide the additional supervision to regulated entities belonging to a financial conglomerate whose parent company has its registered office in a State which is not party to the European Economic Area Agreement, the competent authorities concerned may also apply any other methods they consider appropriate. Said methods must have been validated by the Autorité de Contrôle Prudentiel, where it meets the conditions for acting as coordinator laid down in Article L. 334-9, after consultation with the other competent authorities concerned. The competent authorities concerned may, inter alia, require the formation of a mixed financial holding company having its registered office in a Member State of the European Union or another State party to the European Economic Area Agreement and apply the provisions relating to additional supervision to the regulated entities of the financial conglomerate headed up by said mixed financial holding company. The methods referred to in this paragraph shall be notified to the competent authorities concerned and to the European Commission.

*Inserted by Order No. 2004-1201 of 12 November 2004 Art. 12 Official Journal of 16 November 2004*

Art. L. 633-15. – For the purposes of the additional supervision referred to in this chapter, the Autorité de Contrôle Prudentiel may enter into the agreements referred to in Article L. 633-5 with the competent authorities of a State which is not party to the European Economic Area Agreement in order to ensure the supervision of any entity, regulated or otherwise, belonging to a financial conglomerate.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

Art. L. 642-1. – The penalties imposed by Article 226-13 of the Criminal Code shall also apply in the event of any member, staff member or employee of the Autorité des Marchés Financiers, or any expert appointed to a consultative commission referred to in paragraph III of Article L. 621-2, violating the professional secrecy instituted by Article L. 621-4, without prejudice to the provisions of Article 226-14 of the Criminal Code.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 21 I, II, Art. 48 II 7 Official Journal of 2 August 2003*

Art. L. 642-2. – Whoever obstructs an inspection or investigation of the Autorité des Marchés Financiers carried out as determined in Articles L. 621-9 to L. 621-9-2, or who provides it with inaccurate information, shall incur a penalty of two years' imprisonment and a fine of 300,000 euros.

*Amended by Act No. 2003-706 of 1 August 2003 Art. 21 I, III, Art. 48 II 7 Official Journal of 2 August 2003*

Art. L. 642-3. – Whoever obstructs the sequestration measures or fails to comply with a temporary ban on business activity imposed pursuant to Article L. 621-13 shall incur a penalty of two years' imprisonment and a fine of 300,000 euros.

Whoever fails to pay into court the sum determined by the judge pursuant to Article L. 621-13 within forty-eight hours of the date on which the decision became enforceable shall incur a penalty of two years' imprisonment and a fine of 75,000 euros.

*Amended by Order No. 2000-916 of 19 September 2000 Art. 3 Official Journal of 22 September 2000*

*Amended by Act No. 2003-706 of 1 August 2003 Art. 21 I, IV, Art. 48 II 7 Official Journal of 2 August 2003*

## Part IV Criminal Provisions

### Chapter I Provisions relating to the Autorité de Contrôle Prudentiel

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

Art. L. 641-1. – The penalties imposed by Article 226-13 of the Criminal Code shall apply to whoever participates, or has participated, in the performance of the duties of the Autorité de Contrôle Prudentiel and who violates, or has violated, the professional secrecy instituted by Article L. 612-17, without prejudice to the provisions of Article 226-14 of the Criminal Code.

*Inserted by Order No. 2010-76 of 21 January 2010 Art. 6 Official Journal of 22 January 2010*

### Chapter II Provisions relating to the Autorité des Marchés Financiers

*(Part LSF 2003-706 Art. 21 Section 1, 2 and 3 deleted LSF 2003-706 Art. 48 II )*



# BOOK VII Provisions Applicable to Overseas Territorial Communities

## PART I PROVISIONS COMMON TO SEVERAL TERRITORIAL COMMUNITIES

### Chapter I Provisions Applicable to Guadeloupe, French Guiana, Martinique, Réunion, Saint Barthélemy, Saint Martin, Saint Pierre and Miquelon and Mayotte

*Heading amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 85 Official Journal of 7 May 2005*

*Heading amended by Order No. 2009-797 of 24 June 2009 Art. 1 Official Journal of 26 June 2009*

#### Section I Banknotes and metallic coins

Article L. 711-1. - The banknotes and metallic coins which are legal tender in Metropolitan France are legal tender in the *départements* of Guadeloupe, French Guiana, Martinique and Réunion and also in Mayotte and Saint Pierre and Miquelon. Banknotes are issued by the Banque de France as provided for in Articles L. 122-1 and L. 141-5. Metallic coins are put into circulation as determined in Article L. 711-3.

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 86 Official Journal of 7 May 2005*

*Amended by Order No. 2008-698 of 11 July 2008 Art. 1 Official Journal of 16 July 2008*

#### Section 2 The Institut d'Émission des Départements d'Outre-Mer (IEDOM)

Article L. 711-2. - In the territorial communities referred to in Article L. 711-1, the Banque de France, by virtue of its participation in the European System of Central Banks, performs the duties entrusted to it by Articles L. 122-1 and L. 141-1 to L. 141-5.

Functions pertaining to said duties in the aforementioned *départements* and regions are performed by a national public institution known as the Institut d'Émission des Départements d'Outre-Mer (Issuing Institution of the Overseas *départements*) acting for and on behalf, and under the authority, of the Banque de France.

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 87 Official Journal of 7 May 2005*

Article L. - 711-3. The Institut d'Émission des Départements d'Outre-Mer is, moreover, responsible, in its operational zone consisting of the territorial communities referred to in Article L. 711-1 for:

1. Putting metallic coins in circulation and exercising the public interest functions entrusted to it by the State; agreements entered into between the State and IEDOM define the nature of said services and the terms and conditions of their remuneration;

2. Carrying out any research and other services on behalf of third parties, with the agreement of the Banque de France.

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 87 Official Journal of 7 May 2005*

Article L. 711-4. - I. - In order to perform the duties referred to in Article L. 711-2, credit institutions established in the form of a branch, or having their registered office, in the territorial communities referred to in Article L. 711-1 open accounts with the Banque de France.

II - To enable IEDOM to perform its other duties, the Trésor Public, La Poste and the credit institutions referred to in Article L. 511-1 may hold accounts with it. IEDOM may make transfers of funds between Metropolitan France and its operational zone.

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 87 Official Journal of 7 May 2005*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 80 Official Journal of 23 October 2010 (second sentence of paragraph I deleted)*

Article L. 711-5. - I. - The Institut d'Émission des Départements d'Outre-Mer is administered by a Supervisory Board composed of seven members:

1 The Governor of the Banque de France or his representative, as Chairman;

2 Three representatives of the Banque de France appointed for four years by its Governor;

3 A staff representative, elected for four years pursuant to IEDOM's constitutional documents.

4 Two representatives of the State, one appointed by the Minister for the Economy and the other by the Minister for Overseas France. They may attend meetings of the Board as observers, without voting rights.

A deputy may be appointed for the members other than the Chairman in the same way as for the incumbent.

In the event of the deliberations resulting in a tied vote, the Chairman shall have a casting vote.

IEDOM's constitutional documents determine the circumstances in which the Supervisory Board may deliberate through written consultation in the event of an emergency duly declared by the Chairman.

II. - A Comité Économique Consultatif (Economic Consultative Commission) has been established within the Institut d'Émission des Départements d'Outre-Mer, tasked with examining questions relating to the economic situation and economic development of the overseas *départements* and territorial communities located within the Institution's operational zone. The Commission may ask the Institut's units to carry out its work.

The Comité Économique Consultatif meets at least once each year.

The Comité Économique Consultatif has twelve members:

1. The Governor of the Banque de France or his representative, as Chairman;

2. A representative of the Banque de France appointed for four years by its Governor;

3. Eight prominent individuals, chosen on account of their recognised expertise in the overseas monetary, financial or economic fields, who are appointed jointly, for four years, by the Minister for the Economy and the Minister for Overseas France and local and regional authorities;

4. The two representatives of the State referred to in subparagraph 4 of paragraph I.

A deputy may be appointed for the members other than the Chairman in the same way as for the incumbent.

**III. – An Observatoire des Tarifs Bancaires (Bank Charges Monitoring Panel) has been established within IEDOM, tasked with dealing with questions relating to the bank charges applied in the territorial communities referred to in Article L. 711-1. It shall publish periodic statements on the trend of the charges and the differences noted between the institutions.**

**It shall draw up an activity report each year for the Minister for the Economy, which shall be presented to Parliament.**

Article L. 711-6. - The General Manager of the Institut d'Émission des Départements d'Outre-Mer is appointed by the Chairman of the Supervisory Board. He manages the Institut under said board's supervision. For performance of the duties referred to in Article L. 711-2, however, he shall act under said Board's instructions.

Article L. 711-7. - The functions of the Institut d'Émission des Départements d'Outre-Mer are governed by the civil and commercial legislation.

Article L. 711-8. - In the *départements* of Guadeloupe, French Guiana, Martinique and Réunion, and in Saint Barthélemy, Saint Martin and Mayotte, and likewise Saint Pierre and Miquelon, the Institut d'Émission des Départements d'Outre-Mer performs the functions devolved upon it by Articles L. 131-85 and L. 131-86 in conjunction with the Banque de France.

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 86 Official Journal of 7 May 2005*

*Amended by Order No. 2008-698 of 11 July 2008 Art. 1 Official Journal of 16 July 2008*

**Article L. 711-8-1. – In Mayotte, Saint Barthélemy, Saint Martin and Saint Pierre and Miquelon, the Institut d'Émission des Départements d'Outre-Mer shall forward to the public accountants, at their request, in connection with actions to recover public debts of all kinds, the information relating to the accounts on which cheques may be drawn, which it centralises in order to perform the duties entrusted to it by Article L. 711-8. The Institut is released from professional secrecy for the purposes of this provision.**

**The right to discovery shall be exercised regardless of the medium used to store the information referred to in the first paragraph.**

**It may be exercised in IEDOM's agencies via a written request, howsoever transmitted.**

**Agreements entered into between the Institut d'Émission des Départements d'Outre-Mer, on the one**

**hand, and, as applicable, Mayotte, Saint Barthélemy, Saint Martin and Saint Pierre and Miquelon, on the other hand, stipulate the terms applicable to the fees IEDOM charges for the services it provides.**

*Inserted by Act No. 2010-1249 of 22 October 2010 Art. 89 Official Journal of 23 October 2010*

Article L. 711-9. - The procedures for presenting and approving the accounts of the Institut d'Émission des Départements d'Outre-Mer are identical to those laid down for the Banque de France pursuant to Article L. 144-4.

The Supervisory Board shall appoint two statutory auditors responsible for auditing IEDOM's accounts. They shall be invited to the meeting of the Supervisory Board which approves the accounts for the previous financial year.

IEDOM's accounts are consolidated with those of the Banque de France.

Article L. 711-10. - The Institut d'Émission des Départements d'Outre-Mer receives an allocation from the State.

Article L. 711-11. - The staff members seconded to the Institut d'Émission des Départements d'Outre-Mer by the Agence Française de Développement (French Development Agency) continue to be governed by the provisions applicable to them in their home institution. IEDOM's staff members who are not seconded by said agency are governed by the general employment legislation.

Article L. 711-12. - The operational procedures and constitutional documents of the Institut d'Émission des Départements d'Outre-Mer are determined in a decree issued following consultation with the Conseil d'Etat.

*Chapter I Bis Provisions relating to the introduction of the euro in Mayotte and in the territorial community of Saint Pierre and Miquelon*

*Inserted by Order No. 2001-766 of 29 August 2001 Art. 13 Official Journal of 31 August 2001 and repealed by Order No. 2005-429 amending the Monetary and Financial Code Art. 88 Official Journal of 7 May 2005*

*Articles L. 711-13 to L. 711-21 are also repealed.*

### **Section 3 Provisions relating to the euro in Mayotte and in Saint Pierre and Miquelon**

*Inserted by Order No. 2005-429 amending the Monetary and Financial Code Art. 88 Official Journal of 7 May 2005*

Article L. 711-13. - The currency in Mayotte and in Saint Pierre and Miquelon is the euro.

A euro is divided into one hundred cents.

*Inserted by Order No. 2005-429 amending the Monetary and Financial Code Art. 88 Official Journal of 7 May 2005*

Article L. 711-14. - The introduction of the euro shall not have the effect of amending the terms of a legal instrument or of releasing or exempting the parties from its performance, nor shall it entitle a party to unilaterally alter any such instrument or to extinguish it. This provision shall apply without prejudice to whatever the parties have agreed.

The substitution of the euro for the currency of each participating Member State shall not, of itself, have the effect of amending the wording of legal instruments existing on the date of substitution.

In the foregoing paragraphs, the term “legal instruments” denotes laws and regulations, administrative decisions, court decisions, contracts, unilateral legal transactions, payment instruments other than banknotes and metallic coins, and other instruments having legal effects.

*Inserted by Order No. 2005-429 amending the Monetary and Financial Code Art. 88 Official Journal of 7 May 2005*

Article L. 711-15. - The Governor of the Banque de France shall take the measures necessary to perform the duties referred to in Section 1 of Chapter I of Part IV of Book I of this code, inter alia those required for operation of the Economic and Monetary Union, and to make them applicable in Mayotte and in Saint Pierre and Miquelon, where said measures shall have effects identical to those produced in Metropolitan France.

The Governor's decisions shall be published in the Official Journal of the French Republic.

*Inserted by Order No. 2005-429 amending the Monetary and Financial Code Art. 88 Official Journal of 7 May 2005*

Article L. 711-16. - The measures relating to the euro, inter alia those required for operation of the Economic and Monetary Union, other than those referred to in Article L. 711-15, have been rendered applicable in Mayotte and in Saint Pierre and Miquelon via regulations and shall have effects there identical to those produced in Metropolitan France.

*Inserted by Order No. 2005-429 amending the Monetary and Financial Code Art. 88 Official Journal of 7 May 2005*

## Section 4 Provisions common to Saint Barthélemy, Saint Martin, Saint Pierre and Miquelon and Mayotte

*Section inserted by Order No. 2009-797 of 24 June 2009 Art. 1 Official Journal of 26 June 2009*

Article L. 711-17. – I. – For the application in Saint Barthélemy, Saint Martin, Saint Pierre and Miquelon, and in Mayotte of Part I of Book II, the tax references in Articles L. 211-22 and L. 211-28 are replaced by references to locally applicable provisions having the same object.

II. – Article L. 211-23 is not applicable.

*Section inserted by Order No. 2009-797 of 24 June 2009 Art. 1 Official Journal of 26 June 2009*

## Section 5

*Inserted by Order No. 2009-865 of 15 July 2009 Art. 1 Official Journal of 16 July 2009*

Article L. 711-18. – For the purposes of Article L. 561-14-2 in Saint Barthélemy and in Saint Martin, the references in Article 537 to the Code Général des Impôts (General Tax Code) and to Articles L. 83, L. 85, L. 87 and L. 89 of the Livre des Procédures Fiscales (Book of Tax Procedures) are replaced by references to locally applicable provisions having the same object.

*Inserted by Order No. 2009-865 of 15 July 2009 Art. 1 Official Journal of 16 July 2009*

*Inserted by Order No. 2009-865 of 15 July 2009 Art. 1 Official Journal of 16 July 2009*

Article L. 711-19. – For the application in Saint Barthélemy and in Saint Martin of the provisions of paragraph II of Article L. 561-15, either the offence referred to in the provisions of Article 1741 of the Code Général des Impôts committed by the individuals or entities to whom/which said provisions apply, or, for the individuals or entities subject to the locally established tax regulations, the fact of having fraudulently evaded or of having attempted to fraudulently evade the calculation or the partial or total payment of the taxes referred to therein, shall be deemed to constitute tax fraud.

*Inserted by Order No. 2009-865 of 15 July 2009 Art. 1 Official Journal of 16 July 2009*

Article L. 711-20. – For the application in Saint Barthélemy and in Saint Martin of the provisions of the last subparagraph of paragraph II of Article L. 561-23, the offence described in Article 1741 shall constitute the offence of tax fraud within the meaning of Article L. 711-19.

*Inserted by Order No. 2009-865 of 15 July 2009 Art. 1 Official Journal of 16 July 2009*

Article L. 711-21. – For the application in Saint Barthélemy and in Saint Martin of the third and fourth subparagraphs of paragraph II of Article L. 561-29, the offence described in Article 1741 of the Code Général des Impôts shall constitute the offence of tax fraud within the meaning of Article L. 711-19. Where the unit referred to in Article L. 561-23 has received information concerning acts of fraudulent evasion or of tentative fraudulent evasion of the calculation or of the partial or total payment of the taxes due under the locally established tax regulations, it may send it to the tax authority of the territorial community. It may also send the tax authority of the territorial community information concerning any laundering of tax fraud proceeds carried out in violation of the local regulations. In this case, the tax authority of the territorial community shall forward it to the Public Prosecutor after obtaining the approval of the Commission des Infractions Fiscales (Tax Offences Commission) referred to in Article 1741 A of the Code Général des Impôts. Said commission shall rule on the reasonably perceivable substance of the suspicions of tax fraud reported to the unit referred to in Article L. 561-23 of this code.

*Inserted by Order No. 2009-865 of 15 July 2009 Art. 1 Official Journal of 16 July 2009*

*Amended by Supplementary Budget Act No. 2009-1674 of 30 December 2009 Art. 21 Official Journal of 31 December 2009*

## Chapter II Provisions Applicable in New Caledonia, French Polynesia and the Wallis and Futuna Islands

*Heading amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 89 Official Journal of 7 May 2005*

### Section I Banknotes and metallic coins

Article L. 712-1. – Banknotes and metallic coins denominated in CFP francs are legal tender in New Caledonia, French Polynesia and the Wallis and Futuna Islands.

Article L. 712-2. – In New Caledonia, French Polynesia and the Wallis and Futuna Islands, France retains monetary issuing privileges pursuant to the terms established by its national legislation. It alone is authorised to determine the parity of the CFP franc.

Article L. 712-3. – The monetary issuing service in New Caledonia, French Polynesia and the Wallis and Futuna Islands is provided by the Institut d'Émission d'Outre-Mer, the status of which is determined in Article L. 712-4.

## Section 2 The Institut d'Émission d'Outre-Mer (IEOM)

Article L. 712-4. – The Institut d'Émission d'Outre-Mer (Overseas Issuing Institution) is a public institution. Its constitutional documents are determined in a decree issued following consultation with the Conseil d'Etat.

In conjunction with the Banque de France, the Institut d'Émission d'Outre-Mer implements the State's monetary policy in New Caledonia, French Polynesia and the Wallis and Futuna Islands.

It defines the instruments required to implement it. For said purpose, it determines, inter alia, the basis and level of the statutory reserves entered in its books by the credit institutions in its issuing zone.

Decisions relating to the implementation of the monetary policy become enforceable within ten days of being forwarded to the Minister for the Economy, unless he opposes this. In an emergency declared by IEOM, said time limit may be reduced to three days.

The transactions executed by said IEOM include the discounting of short- and medium-term credits and transfers between New Caledonia, French Polynesia, the Wallis and Futuna Islands and Metropolitan France.

IEOM's net profit after allocations to reserves is credited to the general budget.

*Amended by Order No. 2005-429 amending the Monetary and Financial Code Art. 91 Official Journal of 7 May 2005*

*Amended by Act No. 2009-594 of 27 May 2009 Art. 56 Official Journal of 28 May 2009*

Article L. 712-4-1. – In New Caledonia and the Wallis and Futuna Islands, the Institut d'Émission d'Outre-Mer performs the functions associated with private overindebtedness which are assigned to the Banque de France in Metropolitan France. An agreement signed between the State and IEOM lays down the conditions under which said functions are performed and the terms and conditions of their remuneration.

The Institut d'Émission d'Outre-Mer may render assistance to French Polynesia in connection with the handling of private overindebtedness. An agreement entered into by IEOM and French Polynesia lays down the terms and conditions applicable to such duties and to IEOM's remuneration.

In New Caledonia, French Polynesia and the Wallis and Futuna Islands, the Institut d'Émission d'Outre-Mer may exercise the powers of inspection and investigation of the Autorité des Marchés Financiers for and on behalf of the latter. An agreement entered into by IEOM and the Autorité des Marchés Financiers lays down the terms and

conditions applicable to said powers of inspection and investigation and to IEOM's remuneration.

IEOM is released from professional secrecy when performing such duties.

**In New Caledonia, French Polynesia and the Wallis and Futuna Islands, the Institut d'Émission d'Outre-Mer may provide any research or other service for third parties, with the agreement of its Supervisory Board. Said services shall give rise to the signing of agreements which lay down, inter alia, the terms and conditions of IEOM's remuneration.**

*Inserted by Order No. 2004-824 of 19 August 2004 Art. 2 Official Journal of 21 August 2004.*

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 82 Official Journal of 23 October 2010*

*Section 3 Bank money instruments Section deleted by Order No. 2009-799 of 24 June 2009 Art. 1 Official Journal of 26 June 2009.*

Article L. 712-5. – In New Caledonia, French Polynesia and the Wallis and Futuna Islands, the Institut d'Émission d'Outre-Mer, in conjunction with the Banque de France, centralises the details of all instances of non-payment as well as the information which facilitates identification of all the accounts held by the individuals referred to in Article L. 131-72 and in the second paragraph of Article L. 163-6. It also ensures compliance with the provisions of Article L. 221-38.

IEOM, in conjunction with the Banque de France, ensures the security of the means of payment as defined in Article L. 311-3, other than fiduciary currency, and the relevance of the standards applicable thereto. If it considers that the guarantees of security offered by a means of payment are insufficient, it may recommend that its issuer take any measures in order to remedy the situation. If its recommendations are not followed, it may, after obtaining the issuer's observations, decide to draft an adverse opinion for publication in the Official Journal.

In performing said duties, IEOM makes assessments or asks the Banque de France to do so and requests the issuer or any other interested party to send it the relevant information concerning the means of payment and the terminals or the technical facilities associated therewith.

*Amended by Act No. 2001-1062 of 15 November 2001 Art. 71 V Official Journal of 16 November 2001*

*Amended by Order No. 2009-799 of 24 June 2009 Art. 1 Official Journal of 26 June 2009.*

**Art. L. 712-5-2. – In New Caledonia, French Polynesia and the Wallis and Futuna Islands, the Institut d'Émission d'Outre-Mer shall forward to the public accountants, at their request, in connection with actions to recover public debts of all kinds, the information relating to the accounts on which cheques may be drawn, which it centralises in order to perform the duties entrusted to it by Article L. 712-5. The Institut is released from professional secrecy for the purposes of this provision.**

The right to discovery shall be exercised regardless of the medium used to store the information referred to in the first paragraph.

It may be exercised in IEOM's agencies via a written request, howsoever transmitted.

Agreements entered into between the Institut d'Émission d'Outre-Mer, on the one hand, and, as applicable, New Caledonia, French Polynesia or the Wallis and Futuna Islands, on the other hand, stipulate the terms



applicable to the fees IEOM charges for the services it provides.

*Inserted by Act No. 2010-1249 of 22 October 2010 Art. 89 Official Journal of 23 October 2010*

Art. L. 712-5-1. – An Observatoire des Tarifs Bancaires (Bank Charges Monitoring Panel) has been established within the Institut d'Émission d'Outre-Mer, tasked with dealing with questions relating to the bank charges applied in the territorial communities referred to in Article L. 712-2. It shall publish periodic statements on the trend of the charges and the differences noted between the institutions.

It shall draw up an activity report each year for the Minister for the Economy, which shall be presented to Parliament.

*Inserted by Act No. 2010-1249 of 22 October 2010 Art. 81 Official Journal of 23 October 2010*

#### Section 4 Payment systems and systems for clearing, settling and delivering financial instruments

*Inserted by Act No. 2009-594 of 27 May 2009 Art. 56 Official Journal of 28 May 2009*

Article L. 712-6. – The Institut d'Émission d'Outre-Mer, in conjunction with the Banque de France, ensures the security and proper operation of the payment systems and the systems used for clearing, settling and delivering financial instruments.

*Inserted by Act No. 2009-594 of 27 May 2009 Art. 56 Official Journal of 28 May 2009*

#### Section 5 Establishment of the balance of payments

*Inserted by Act No. 2009-594 of 27 May 2009 Art. 56 Official Journal of 28 May 2009*

Article L. 712-7. – The Institut d'Émission d'Outre-Mer establishes the balance of payments of the territories in its issuing zone. It is authorised to receive from the institutions and undertakings carrying on their business in said territories all the information it requires for the performance of said task.

A decree determines the sanctions applicable in the event of any breach of the reporting obligations referred to in the first paragraph.

*Inserted by Act No. 2009-594 of 27 May 2009 Art. 56 Official Journal of 28 May 2009*

### Chapter III Provisions Common to Saint Pierre and Miquelon, Mayotte, New Caledonia, French Polynesia and the Wallis and Futuna Islands Concerning Information on the Principal

*Inserted by Order No. 2009-102 of 30 January 2009 Art. 1 Official Journal of 31 January 2009.*

#### Section 1 Parties and transactions subject to the reporting obligations

*Inserted by Order No. 2009-102 of 30 January 2009 Art. 1 Official Journal of 31 January 2009.*

Article L. 713-1. - For the purposes of this chapter:

1 “Principal”: shall mean either the holder of an account opened with the payment service providers described in subparagraph 3 below who authorises a transfer of funds from said account, or, where no such account exists, the individual or legal entity giving the order to execute a transfer of funds;

2 “Recipient”: shall mean the individual or legal entity named as the final recipient of the transferred funds;

3 “Payment service provider”: shall mean the undertakings governed by Part I and Chapters I to III of Part II of Book V, as well as the Post and Telecommunications Offices in New Caledonia and French Polynesia, where they make transfers of funds:

a) The principal's payment service provider is the payment service provider which receives an instruction from a principal to make a transfer of funds to a recipient;

b) The recipient's payment service provider is the payment service provider responsible for making the funds available to the recipient;

c) The intermediate payment service provider is a payment service provider, other than those referred to in points a and b above, who participates in the execution of the transfer of funds;

4 “Transfer of funds”: shall mean any transaction carried out on behalf of a principal, via electronic means, through a payment service provider in order to make the funds available to a recipient holding an account opened with a payment service provider, irrespective of whether or not the recipient is the principal;

5 “Batch transfer”: shall mean several individual transfers of funds which are grouped together for transmission;

6 “Unique identifier”: shall mean a combination of letters, numbers or symbols determined by the payment service provider in accordance with the protocols of the payment and settlement system, or electronic mail system, used to make the transfer of funds, which enables the principal to be identified.

*Inserted by Order No. 2009-102 of 30 January 2009 Art. 1 Official Journal of 31 January 2009.*

*Amended by Order No. 2010-11 of 7 January 2010 Art. 14 Official Journal of 8 January 2010*

Article L. 713-2. - The provisions of this chapter are applicable to transfers of funds in any currency issued or received by any payment service provider domiciled in Saint Pierre and Miquelon, Mayotte, New Caledonia, French Polynesia or the Wallis and Futuna Islands, with the exception of:

1 Transfers of funds carried out using a credit card or a debit card under a contract entered into with a payment service provider which allows payment to be effected for goods and services provided, where a unique identifier has been allocated to the principal;

2 Transfers of funds carried out using electronic money where the amount of the transaction is below or equal to €1,000 or the exchange value in local currency;

3 Transfers of funds carried out using a mobile telephone, another digital device or a device linked to information technology, where said transfers are carried out on the basis of prepayment and do not exceed €150 or the exchange value in local currency;

4 Postpaid transfers of funds carried out using a mobile telephone, another digital device or a device linked to information technology under a contract entered into with a payment service provider which allows payment to be effected for goods and services provided, where a unique identifier has been allocated to the principal;

5 Transfers of funds carried out in the territorial community from or to Metropolitan France, the territorial communities governed by Article 73 of the Constitution and the other territorial communities governed by Article 74 of the Constitution, and New Caledonia, provided that the recipient's payment service provider is able to identify the individual or legal entity who/which is making the transfer, via the recipient, by means of a unique reference number, and that the amount of the transaction is below or equal to €1,000 or the exchange value in local currency;

6 Cash withdrawals made by the principal for his/its own account;

7 Transfers of funds carried out by virtue of a direct debit instruction, provided that a unique identifier has been allocated to the principal;

8 Transfers of funds made by means of cheques in the form of truncated cheques;

9 Transfers of funds made for the purpose of paying taxes, fines or other levies due to the public authorities, in France;

10 Transfers of funds in respect of which the principal and the recipient are both payment service providers acting for their own account.

*Inserted by Order No. 2009-102 of 30 January 2009 Art. 1 Official Journal of 31 January 2009.*

Article L. 713-3. - Transfers of funds other than those referred to in subparagraphs 1 to 10 of Article L. 713-2 are governed by Articles L. 713-4 to L. 713-12.

*Inserted by Order No. 2009-102 of 30 January 2009 Art. 1 Official Journal of 31 January 2009.*

## Section 2 Obligations of the principal's payment service provider

Article L. 713-4. -I. — Where transfers of funds are made to a recipient whose payment service provider is not located in France:

1 The principal's payment service provider shall obtain full information concerning the latter: name, address and account number. The address may be replaced by the principal's date and place of birth, customer identification number or national identity number. Where the principal has no account number, the principal's payment service provider shall use a unique identifier in its place;

2 Where batch transfers are made to several recipients by one principal, the individual transfers grouped together in such batches are not accompanied by full information concerning the principal where the batch file contains such information and the individual transfers indicate the principal's account number or a unique identifier;

3 Before the funds are transferred, the principal's payment service provider shall verify the exactness and completeness of the information referred to in paragraph 1 above on the basis of documents, data or information obtained from a reliable and independent source.

II. — Where transfers of funds are made from an account, the verification may be deemed to have taken place where one of the following conditions is met:

a) The identity of a principal was verified when the account was opened and the information obtained was stored as described in Article L. 561-12, in its wording in force on the date of publication of Order No. 2009-104 of 30 January 2009 on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing;

b) The principal is an individual referred to in subparagraph 13 of Article L. 561-2, in its wording in force on the date of publication of Order No. 2009-104 of 30 January 2009.

Transfers of funds not made from an account and involving an amount below €1,000 or its exchange value in local currency shall not give rise to the verifications referred to in the first paragraph unless the transaction is carried out in several linked operations having a combined total above €1,000 or its exchange value in local currency.

III. — The principal's payment service provider shall retain the full information concerning the principal for five years.

*Inserted by Order No. 2009-102 of 30 January 2009 Art. 1 Official Journal of 31 January 2009.*

Article L. 713-5. – I. — Transfers of funds made between the territorial community and Metropolitan France, the territorial communities governed by Article 73 of the Constitution and the other territorial communities governed by Article 74 of the Constitution, and New Caledonia, must be accompanied only by the principal's account number or a unique identifier.

II. – However, the principal's payment service provider, at the request of the recipient's payment service provider, shall provide the latter with the information referred to in subparagraph 1 of paragraph I of Article L. 713-4 within three business days of receiving said request.

*Inserted by Order No. 2009-102 of 30 January 2009 Art. 1 Official Journal of 31 January 2009.*

### Section 3 Obligations of the recipient's payment service provider

Article L. 713-6. - The recipient's payment service provider shall verify that the fields pertaining to the information concerning the principal provided in the electronic mail system or payment and settlement system used to make a transfer of funds have been completed using characters or elements that are compatible with said system.

It shall have procedures which enable it to detect:

a) Where the principal's payment service provider is located in France, failure to provide the information referred to in paragraph I of Article L. 713-5;

b) Where the principal's payment service provider is not located in France, failure to provide the information referred to in paragraph I of Article L. 713-4 or, where applicable, in subparagraph 3 of Article L. 713-9;

c) Where batch transfers are made and the principal's payment service provider is not located in France, failure to provide the information referred to in Article L. 713-4. Failure to provide said information shall be detected in the batch transfer but not in the individual transfers grouped together in the batches.

*Inserted by Order No. 2009-102 of 30 January 2009 Art. 1 Official Journal of 31 January 2009.*

Article L. 713-7. - I. — Where, upon receipt of the transfer of funds, the recipient's payment service provider notes that the information concerning the principal is missing or incomplete, it shall reject the transfer or request full information concerning the principal. In all cases, it shall comply with the provisions of Part VI of Book V.

II. — 1 Where a payment service provider regularly fails to provide the required information concerning the principal, the recipient's payment service provider shall take measures which may, initially, include the issuing of warnings and the setting of deadlines. It may then reject any further transfers of funds from said payment service provider or limit or end its business relationship with it;

2 The situation referred to in subparagraph 1 above shall be the subject of a declaration made to the unit referred to in Article L. 561-23 in its wording in force on the date of Order No. 2009-104 of 30 January 2009 by the recipient's payment service provider.

III. — The recipient's payment service provider shall take into account the total or partial lack of information concerning the principal when assessing the suspect nature of the transfer of funds or of all the transactions linked to said transfer and the requirement to report it, pursuant to the obligations set forth in Part VI of Book V, to the unit referred to in Article L. 561-23, in its wording in force on the date of Order No. 2009-104 of 30 January 2009.

IV. — The recipient's payment service provider shall retain all the information it has received concerning the principal for five years.

*Inserted by Order No. 2009-102 of 30 January 2009 Art. 1 Official Journal of 31 January 2009.*

### Section 4 Obligation of the intermediate payment service providers

*Inserted by Order No. 2009-102 of 30 January 2009 Art. 1 Official Journal of 31 January 2009.*

Article L. 713-8. - The intermediate payment service providers shall ensure that all the information concerning the principal received in connection with a transfer of funds is kept with said transfer.

*Inserted by Order No. 2009-102 of 30 January 2009 Art. 1 Official Journal of 31 January 2009.*

Article L. 713-9. - Where the principal's payment service provider is not located in France and the intermediate payment service provider is located in the territorial community:

1 The intermediate payment service provider may use a payment system having technical limitations which prevent transmission of the information concerning the principal where transfers of funds are made to the recipient's payment service provider.

2 Where the intermediate payment service provider notes, upon receipt of the transfer of funds, that the information is missing or incomplete, it shall not use a payment system having technical limitations unless it is able to inform the recipient's payment service provider of this via a means of communication that the two payment service providers have accepted or agreed upon;

3 Where it uses a payment system having technical limitations, the intermediate payment service provider shall provide the recipient's payment service provider, at its request and within three business days of receiving said request, with all the information, complete or otherwise, it has received concerning the principal.

4 In the cases referred to in subparagraphs 2 and 3, the intermediate payment service provider shall retain all the information it has received concerning the principal for five years.

*Inserted by Order No. 2009-102 of 30 January 2009 Art. 1 Official Journal of 31 January 2009.*

### Section 5 Obligations of cooperation

*Inserted by Order No. 2009-102 of 30 January 2009 Art. 1 Official Journal of 31 January 2009.*

Article L. 713-10. - I. — In accordance with the procedures set forth in Part VI of Book V, payment service providers shall respond, exhaustively and immediately, to any requests for information concerning the principal that they receive from the Autorité de Contrôle Prudentiel.

II. — Information provided pursuant to paragraph I may be used solely for the purposes of preventing, investigating or detecting money laundering or terrorist financing activities.

*Inserted by Order No. 2009-102 of 30 January 2009 Art. 1 Official Journal of 31 January 2009.*

## Section 6 Use of the information collected and held

Article L. 713-11. - The information collected and held pursuant to this chapter shall be used solely for preventing money laundering and terrorist financing.

## Section 7 Sanctions

Article L. 713-12. - Failure to comply with the reporting obligations set forth in Articles L. 713-4 to L. 713-11 shall be sanctioned as provided for in Article L. 612-39.

## **Chapter IV Provisions Common to Saint Pierre and Miquelon, Mayotte, New Caledonia, French Polynesia and the Wallis and Futuna Islands Relating to the Freezing of Assets**

### Section 1 Measures to freeze assets taken in cases other than those envisaged in Articles L. 562-1 and L. 562-2 of the Monetary and Financial Code

Article L. 714-1. - I. — In Mayotte, New Caledonia, French Polynesia and the Wallis and Futuna Islands, for a renewable period of six months, the Minister for the Economy may decide to freeze some of all of the funds, financial instruments and economic resources belonging to individuals, institutions or entities against whom/which such measures are in force in Metropolitan France by virtue of regulations adopted by the European Commission or the Council.

The income generated by said funds, financial instruments or economic resources shall also be frozen.

II. — In the territorial communities referred to in paragraph I, the Minister for the Economy may decide to prohibit, for a renewable period of six months, any movement or transfer of funds, financial instruments and economic resources to the individuals, institutions or entities referred to in paragraph I.

Article L. 714-2. - The decisions of the Minister for the Economy taken pursuant to this article are published in the Official Journal and are enforceable with effect from their date of publication.

Article L. 714-3. - The freezing measures and prohibitions referred to in Article L. 714-1 shall be implemented as provided for in Articles L. 562-3, L. 562-4 and L. 562-7 to L. 562-10 and L. 574-3, in their wording in force on the date of publication of Order No. 2009-104 of 30 January 2009 on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing, without prejudice to the following adaptations:

1 The “entities and individuals referred to in Article L. 561-2”, in its wording in force on the date of publication of Order No. 2009-104 of 30 January 2009, shall be the individuals, institutions and entities referred to in this article pursuant to the legislation applicable to them locally;

2 In Article L. 562-7, the words: “referred to in Article L. 562-1 or in Article L. 562-2” are replaced by the words: “referred to in Article L. 714-1”;

3 In Article L. 562-9, the words: “referred to in Article L. 562-1 and in Article L. 562-2” are replaced by the words: “referred to in Article L. 714-1”;

4 In Article L. 574-3, the words: “applied pursuant to Chapter IV of Part VI of this Book” are replaced by the words: “applied pursuant to this section” and, for the purposes of the second paragraph, the references to the Customs Code (Code des Douanes) are replaced by the references to the locally applicable provisions having the same object.

Article L. 714-4. - A decree issued following consultation with the Conseil d'Etat determines the implementing provisions of this section.

## **PART II PROVISIONS SPECIFIC TO SAINT PIERRE AND MIQUELON**

### **Chapter I The Currency**

#### Section 1 Rules relating to the use of the currency

Article L. 721-1. – Article L. 112-7 is not applicable in Saint Pierre and Miquelon.

In Article L. 131-71, the sentence: “The tax authorities may, at any time, request communication of the identity of the individuals and legal entities to whom/which forms which do not conform to said specification are issued, along with the numbers of said forms.” is not applicable in Saint Pierre and Miquelon.

#### Section II Financial dealings with foreign countries

##### Subsection 1 Reporting obligations

Article L. 721-2. – In Saint Pierre and Miquelon, individuals must declare the sums, securities or assets that they transfer abroad or from abroad without recourse to the services of an institution subject to the provisions of Part I of Book V or of Article L. 518-1.

A declaration shall be made for each transfer, save for transfers of an amount below ten thousand euros.

A decree issued following consultation with the Conseil d'Etat determines the implementing provisions of this article.



## Subsection 2 Detection and prosecution of offences

Article L. 721-3. - I. — Failure to discharge the obligations set forth in Article L. 721-2 shall incur a fine equal to one quarter of the sum to which the offence or attempted offence relates.

**II. – In the event of customs officers detecting an offence referred to in paragraph I, they shall confiscate the entire sum to which the offence or attempted offence related for a period of six months. Said period may be renewed with the consent of the Public Prosecutor having jurisdiction over the place where the Directorate of Customs in charge of the unit handling the case is located but shall not exceed a total period of twelve months.**

The sum confiscated shall be attached, and forfeiture thereof may be pronounced by the competent court if, during the period of confiscation, it is established that the perpetrator of the offence referred to in paragraph I is or was in possession of objects giving grounds for believing that he is or was also the perpetrator of one or more offences envisaged in, and punishable under, the Customs Code applicable in Saint Pierre and Miquelon, or that he is participating in or has participated in the commission of such offences or, if plausible reasons exist for believing that the perpetrator of the offence referred to in paragraph I has also committed one or more offences envisaged in, and punishable under, the Customs Code applicable in Saint Pierre and Miquelon or that he has participated in the commission of such offences.

Dismissal of the charges, or acquittal and discharge, shall entail the lifting of the confiscation and attachment measures imposed, as of right, with the Trésor Public meeting the cost thereof. The same shall apply in the event of the cessation of an action seeking the application of tax penalties.

III - Detection, recording and prosecution of the offences referred to in paragraph I shall take place as determined in the Customs Code applicable in Saint Pierre and Miquelon.

Article L. 721-4. – The measures referred to in Articles L. 721-2 and L. 721-3 do not apply to financial dealings between Saint Pierre and Miquelon, on the one hand, and Metropolitan France, Guadeloupe, French Guiana, Martinique, Réunion, Saint Barthélemy, Saint Martin, Mayotte, the Wallis and Futuna Islands, New Caledonia and French Polynesia, on the other.

## Chapter II Products

### Section 1 Undertakings for collective investment

Article L. 722-1. – Article L. 214-41 is not applicable in Saint Pierre and Miquelon.

### Section 2 Products having a specific tax scheme

Article L. 722-2. – Articles L. 221-13 to L. 221-27 are not applicable in Saint Pierre and Miquelon.

Article L. 722-3. – Article L. 222-1 is not applicable in Saint Pierre and Miquelon.

## Chapter III Services

Article L. 723-1. – The second and fourth subparagraphs of Article L. 312-3 and Article L. 312-17 are not applicable in Saint Pierre and Miquelon.

## Chapter IV The Markets

Article L. 724-1. – Articles L. 221-22 to L. 211-33 are not applicable in Saint Pierre and Miquelon.

## Chapter V Service Providers

### Section I Banking sector institutions

Article L. 725-1. – Articles L. 511-12 and L. 511-21 to L. 511-28 are not applicable in Saint Pierre and Miquelon.

### Section 2 Investment service providers

Article L. 725-2. – Article L. 531-3 and Articles L. 532-16 to L. 532-27 are not applicable in Saint Pierre and Miquelon.

In Article L. 532-5, the words: “and shall have the benefit of the provisions of Articles L. 422-1 and L. 532-23 to L. 532-26” are not applicable in Saint Pierre and Miquelon.

### Section 3 Obligations relating to the prevention of money laundering

Article L. 725-3. - I. — Article L. 152-4 is not applicable in Saint Pierre and Miquelon.

II. – For the application in Saint Pierre and Miquelon of Article L. 561-2, the references to the Social Security Code, the Rural Code and the Mutuality Code are replaced by references to the locally applicable provisions having the same object.

III. – For the application in Saint Pierre and Miquelon of Article L. 561-14-2, the references to Article 537 of the Code Général des Impôts and to Articles L. 83, L. 85, L. 87 and L. 89 of the Livre des Procédures Fiscales are replaced by references to the locally applicable provisions having the same object.

IV. – For the application in Saint Pierre and Miquelon of the provisions of paragraph II of Article L. 561-15, either the offence referred to in the provisions of Article 1741 of the Code Général des Impôts committed by the individuals or

entities to whom/which said provisions apply, or, for the individuals or entities subject to the locally established tax regulations, the fact of having fraudulently evaded or of having attempted to fraudulently evade the calculation or the partial or total payment of the taxes referred to therein, shall be deemed to constitute tax fraud.

V. – For the application in Saint Pierre and Miquelon of the provisions of the last subparagraph of paragraph II of Article L. 561-23, the offence described in Article 1741 shall constitute the offence of tax fraud within the meaning of the provisions of paragraph IV of this article.

VI. – For the application in Saint Pierre and Miquelon of the third and fourth subparagraphs of paragraph II of Article L. 561-29, the offence described in Article 1741 of the Code Général des Impôts shall constitute the offence of tax fraud within the meaning of the provisions of paragraph IV. Where the unit referred to in Article L. 561-23 has received information concerning acts of fraudulent evasion or of tentative fraudulent evasion of the calculation or of the partial or total payment of the taxes due under the locally established tax regulations, it may send it to the tax authority of the territorial community. It may also send the tax authority of the territorial community information concerning any laundering of tax fraud proceeds carried out in violation of the local regulations. In this case, the tax authority of the territorial community shall forward it to the Public Prosecutor after obtaining the approval of the Commission des Infractions Fiscales referred to in Article 1741 A of the Code Général des Impôts. Said commission shall rule on the reasonably perceivable substance of the suspicions of tax fraud reported to the unit referred to in Article L. 561-23 of this code.

## Chapter VI Banking Authorities and Financial Authorities

### PART III PROVISIONS SPECIFIC TO MAYOTTE

Article L. 730-1. - The references made by provisions of this code to other articles herein relate solely to the Articles applicable in Mayotte, with the adaptations, if any, provided for in this Part.

Article L. 730-2. – Where there are no adaptations, the references made by provisions of this code applicable in Mayotte to provisions which are not applicable there, inter alia to provisions of the Labour Code and of the Code Général des Impôts, are replaced by the references to the locally applicable provisions having the same object.

Article L. 730-3. - The provisions of this code which make reference to the European Community are applicable in Mayotte only insofar as they come within the scope of the Overseas Association Decision referred to in Article 136 of the Treaty on the Functioning of the European Community.

## Chapter I Adapting Provisions for Book I

Article L. 731-1. – In Mayotte, the Institut d'Émission des Départements d'Outre-Mer, in conjunction with the Banque de France, centralises the details of all instances of non-payment as well as the information which facilitates identification of all

the accounts held by the individuals referred to in Article L. 131-72 and in the second paragraph of Article L. 163-6.

Article L. 731-2.

*Repealed by Order No. 2010-11 of 7 January 2010 Art. 1 Official Journal of 8 January 2010*

Article L. 731-3. - Articles L. 152-1 to L. 152-4 are replaced by the provisions of this article and of Articles L. 731-4 and L. 731-5.

In Mayotte, individuals must declare the sums, securities or assets that they transfer abroad or from abroad without recourse to the services of an institution subject to the provisions of Part I of Book V.

A declaration shall be made for each transfer, with the exception of transfers of an amount below 10,000 euros.

A decree issued following consultation with the Conseil d'Etat determines the implementing provisions of this article.

Article L. 731-4. - I. — Failure to discharge the obligations set forth in Article L. 731-3 shall incur a fine equal to one quarter of the sum to which the offence or attempted offence relates.

II - In the event of customs officers discovering an offence referred to in paragraph I, they shall confiscate the entire sum to which the offence or attempted offence relates for a period of six months. Said period may be renewed with the consent of the Public Prosecutor of the place where the customs authority handling the case is located but shall not exceed a total period of twelve months.

The sum confiscated shall be attached, and forfeiture thereof may be pronounced by the competent court if, during the period of confiscation, it is established that the perpetrator of the offence referred to in paragraph I is or was in possession of objects giving grounds for believing that he is or was also the perpetrator of one or more offences envisaged in and rendered illegal by the Customs Code applicable in Mayotte, or that he is participating or has participated in the commission of such offences, or if there are plausible reasons for believing that the perpetrator of the offence referred to in paragraph I has also committed one or more offences envisaged in and rendered illegal by the Customs Code applicable in Mayotte or that he has participated in the commission of such offences.

Dismissal of the charges, or acquittal and discharge, shall entail the lifting of the confiscation and attachment measures imposed, as of right, with the Trésor Public meeting the cost thereof. The same shall apply in the event of the cessation of an action seeking the application of tax penalties.

III. - Detection, recording and prosecution of the offences referred to in paragraph I shall take place as determined in the Customs Code applicable in Mayotte.

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 46 Official Journal of 23 October 2010*

Article L. 731-5. The provisions of Articles L. 731-3 and L. 731-4 do not apply to financial dealings between Mayotte, on the one hand, and Metropolitan France, Guadeloupe, French Guiana, Martinique, Réunion, Saint Pierre and Miquelon, the Wallis and Futuna Islands, New Caledonia and French Polynesia, on the other.

Article L. 731-6. -In Article L. 165-1:

1 The words: “Article 459 of the Customs Code” are replaced by the words: “Article 321 of the Customs Code applicable in Mayotte”;

2 The words: “Article 451 of the Customs Code” are replaced by the words: “Article 314 of the Customs Code applicable in Mayotte”.

*Amended by Order No. 2008-698 of 11 July 2008 Art. 1 Official Journal of 16 July 2008*

## Chapter II Adapting Provisions for Book II

Art. L. 732-1. – Subparagraph 4 of paragraph II of Article L. 214-34 is not applicable in Mayotte.

Art. L. 732-2. – For the purposes of Article L. 214-41, subparagraph a) of paragraph I is worded as follows:

a) Have incurred, during the three previous financial years, accrued research expenses of an amount at least equal to one third of the highest annual turnover achieved during said three-year period.

The expenses taken into account are the following:

- depreciation and amortisations for fixed assets created or acquired in new condition which are directly allocated to scientific and technical research projects, including the creation of prototypes or pilot installations;

- staff costs pertaining to researchers and technicians employed exclusively on such projects;

- other operational expenses incurred through those same projects;

- expenses incurred through projects of the same type entrusted to public research bodies or universities;

- expenses incurred through projects of the same type entrusted to private research bodies approved by the Minister for Research or to scientific or technical experts approved by said Minister;

- costs incurred through obtaining and maintaining patents and plant variety certificates;

- costs incurred through defending patents and plant variety certificates;

- depreciation and amortisations for patents and plant variety certificates acquired in order to carry out experimental research and development projects.

Article L. 732-3. – In paragraph II of Article L. 214-48, the words: “a branch established in France of a credit institution having its registered office in a State party to the European Economic Area Agreement” are deleted.

Article L. 732-4. - The first paragraph of Article L. 221-30 is worded as follows:

Taxpayers domiciled in Mayotte for tax purposes may open a personal equity plan (plan d'épargne en actions, PEA) with a credit institution, La Poste, an investment firm or an insurance company governed by the Insurance Code

Article L. 732-5. - Article L. 221-31 is adapted as indicated below:

1 Subparagraph 2, c), of paragraph I is worded as follows:

c) Units or shares in collective investment undertakings established in France;

2 Subparagraph 4 of paragraph I is worded as follows:

4 The issuers of securities referred to in paragraph 1 must have their registered office in France;

3 Subparagraph 1 of paragraph II is worded as follows:

1 The units of common funds created pursuant to the legislation on employee profit-sharing schemes cannot be invested in the personal equity plan.

The sums paid into an personal equity plan may not be used to buy securities offered at a price below 95% of the average of the prices or of the average buying price respectively referred to in Articles L. 225-177 and L. 225-179 of the Commercial Code.

Art. L. 732-6. – For its application in Mayotte, Article L. 221-29 is worded as follows:

Art. L. 221-29. - The rules relating to home-ownership savings accounts are applicable in Mayotte as provided for in Article L. 371-4 of the Building and Housing Code.

## Chapter III Adapting Provisions for Book III

This chapter has no adapting provisions.

## Chapter IV Adapting Provisions for Book IV

Art. L. 734-1. - The following provisions are not applicable in Mayotte:

1 In Part II, Article L. 421-13, the second subparagraph of paragraph II of Article L. 421-14, the eighth paragraph of Article L. 421-17, Article L. 421-20, Chapter II relating to the European regulated markets and Section 6 of Chapter IV relating to the European multilateral systems;

2 In Part III, paragraph II of Article L. 433-1;

3 In Part V, Article L. 451-1-5.

Article L. 734-2. - In Article L. 421-2, the words: “in Metropolitan France or the overseas *départements*” are replaced by the words: “in France”.

Article L. 734-3. – The provisions of Articles L. 211-2 to L. 211-26 apply, in the manner described in Article L. 730-2, to the transfers with full title of securities, certificates or bills, by way of guarantee, provided for in paragraph I of Article L. 211-38 carried out over the counter in connection with financial futures transactions, the transfers of certificates referred to in subparagraph 3 of Article L. 211-22 and the transfers referred to in Article L. 330-2.

Article L. 734-4. - In Article L. 433-3:

I. - 1 “In the first and last subparagraphs of paragraph I, after the words: **(on)** a regulated market”, the words: “of a Member State of the European Community or another State party to the European Economic Area Agreement” are replaced by the word: “French”;

2 In paragraph II, the words: “regulated market of a Member State of the European Union or of another State party to the European Economic Area Agreement are replaced by the words: “French regulated market”;

3 In paragraph III, the words: “of a State party to the European Economic Area Agreement” are replaced by the word: “French”.

II. – In paragraph V of Article L. 433-4, the words: “of another State party to the European Economic Area Agreement” are replaced by the word: “French”.

*Amended by Act No. 2010-1249 of 22 October 2010 Art. 53 Official Journal of 23 October 2010 effective 1 February 2011*

Article L. 734-5. -

Article L. 734-6. - In Article L. 440-2:

1 In paragraphs 1 and 2, the words: “in a Member State of the European Community or another State party to the European Economic Area Agreement” are replaced by the words: “in France”;

2 In paragraph 4, the words: “in Metropolitan France or in the overseas *départements*” are replaced by the words: “in France”;

3 In paragraph 5, the words: “which is not a member of the European Community or party to the European Economic Area Agreement” are replaced by the words: “other than France” and the words: “in Metropolitan France or the overseas *départements*” are replaced by the words: “in France”;

4 In the seventh paragraph, the words: “in Metropolitan France or in the overseas *départements*” are deleted.

Article L. 734-7. - In Article L. 451-1-1, the words: “of a State party to the European Economic Area Agreement” are replaced by the word: “French” and the words: “in the European Economic Area or a third-party country” are replaced by the word: “abroad”.

Article L. 734-8. - In paragraph I and in subparagraph 1 of paragraphs II, III and IV of Article L. 451-1-2, the words: “of a State party to the European Economic Area Agreement” are replaced by the word: “French”.

## Chapter V Adapting Provisions for Book V

Article L. 735-1. - The following provisions are not applicable in Mayotte:

1 In Part I, Subsection 2 of Section 3 of Chapter I relating to the credit institutions' freedom of establishment and freedom to provide services in the States party to the European Economic Area Agreement;

2 In Part III, Section 2 of Chapter II relating to the investment service providers' freedom to provide services in the States party to the European Economic Area Agreement.

Art. L. 735-2. - In Article L. 545-5, the words: “in Metropolitan France or in the overseas *départements*” are replaced by the words: “in France”.

Article L. 735-3. - Part VI shall apply in the following circumstances:

2 Where, pursuant to Article 16 of Act No. 71-1130 of 31 December 1971, the number of members of the bar is below the number required to elect a bar council, the declaration referred to in Article L. 562-2 shall be sent directly to the unit instituted by Article L. 562-4;

3 In Articles L. 562-4, L. 562-8 and L. 566-2, the words: “415 of the Customs Code” are replaced by the words: “283 of the Customs Code applicable in Mayotte”;

4 In Article L. 563-2, the first paragraph is worded as follows:

The provisions of Article L. 563-1 apply to:

- variable-rate Treasury Bonds, the savings bonds of La Poste, the bonds of the Caisse Nationale du Crédit Agricole, the bonds of the Crédit Mutuel, the five-year bonds of the Crédit Foncier de France, the bonds issued by the Regional Provident Groups, the bonds of the Caisse Nationale de l'Énergie, and the medium-term notes of the credit institutions;

- capitalisation bonds and contracts and investments of the same kind made with insurance companies.

5 It may also send the tax authority of the territorial community information concerning any laundering of tax fraud proceeds carried out in violation of the local regulations. In this case, the tax authority of the territorial community shall forward it to the Public Prosecutor after obtaining the approval of the Commission des Offences Fiscales referred to in Article 1741 A of the Code Général des Impôts. Said commission shall rule on the reasonably perceivable substance of the suspicions of tax fraud reported to the unit referred to in Article L. 561-23 of this code.

Article L. 735-4. - Part V is adapted as follows:

1 In Article L. 574-1, the words: “415 of the Customs Code” are replaced by the words: “283 of the Customs Code applicable in Mayotte”;

2 In Article L. 574-3, the words: “Parts II and XII of the Customs Code” are replaced by the words: “Parts II and XI of the Customs Code applicable in Mayotte” and the words: “Articles 453 to 459 of the Customs Code” are replaced by the words: “Articles 315 to 321 of the Customs Code applicable in Mayotte”.

## Chapter VI Adapting Provisions for Book VI

Art. L. 736-1. - The following provisions are not applicable in Mayotte:

1 In Part I, Article L. 613-20-4 and subsection 2 of Section 2 of Chapter III relating to the measures to reorganise and liquidate Community credit institutions;

2 In Part II, Article L. 621-8-3;

3 In Part III, Articles L. 632-1, L. 632-2, L. 632-5, L. 632-6, L. 632-8 to L. 632-12, L. 633-2 to L. 633-6, L. 633-8 to L. 633-10 and paragraph IV of Article 633-12.

Article L. 736-2. - In Article L. 621-8:

1 In paragraph I, the words: “or any equivalent document required under the legislation of another State party to the European Economic Area Agreement” are deleted;

2 Paragraph III is worded as follows:

III. — The draft document referred to in paragraph I shall also be subject to prior approval from the Autorité des Marchés Financiers in the cases determined in its General Regulation for any transaction carried out in France where the registered office of the issuer of the securities which are the subject of the transaction is outside the European Economic Area and where the transaction involves financial instruments whose initial public offer or assignment or first admission to a regulated market took place in France;

3 Paragraphs V and VI are deleted.

Art. L. 736-3. - In Article L. 621-32, the words: “pursuant to Directive 2003/125/EC of the Commission of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the fair presentation



of investment recommendations and disclosure of conflicts of interest” are deleted.

Article L. 736-4. - In Article L. 632-7:

1 In paragraphs I and II, the words: “which is not a Member State of the European Community and not party to the European Economic Area Agreement,” are replaced by the words: “other than France”;

2 In paragraph III, the words: “of another Member State of the European Community or another State party to the European Economic Area Agreement or a third-party country” are replaced by the words: “other than France”.

Art. L. 736-5. - In Article L. 632-13, the words: “which is not a Member State of the European Community and not party to the European Economic Area Agreement,” are replaced by the words: other than France”.

Article L. 736-6. - In Article L. 632-15:

The words: “which is not party to the European Economic Area Agreement” are replaced by the words: “other than France”.

Article L. 736-7. - In Article L. 632-16:

1 In the first and second paragraphs, the words: “which is not a Member State of the European Community and not party to the European Economic Area Agreement” are replaced by the words: “other than France”;

2 In the third paragraph, the words: “of Article L. 632-5 and of paragraph III of Article L. 632-7” are replaced by the words: “of paragraph III of Article L. 632-7”;

3 Said article is supplemented by a paragraph worded as follows:

The Autorité des Marchés Financiers and the Autorité de Contrôle Prudentiel may refuse to accede to requests from the authorities of foreign States relating to the activities referred to in the first paragraph only where the nature thereof is likely to undermine French sovereignty, security or public order, or where criminal proceedings have already been instituted in France on the basis of the same facts and against the same entities, or where said entities have already been sanctioned for the same facts by a final decision.

Article L. 736-7. - In Article L. 633-11, the words: “which is not party to the European Economic Area Agreement” are replaced by the words: “other than France”.

## Part IV PROVISIONS APPLICABLE IN NEW CALEDONIA

### Chapter I The Currency

#### Section 1 Rules for the use of the currency

Article L. 741-1. - Articles L. 112-6, L. 112-7, L. 112-11 and L. 112-12 are applicable in New Caledonia.

#### Section 2 Bank money instruments

Article L. 741-2. – I. – Articles L. 131-1 to L. 131-87, with the exception of the second sentence of the third paragraph of Article L. 131-71, as well as Chapter III of Part III, with the exception of the second subparagraph of paragraph II of Article L. 133-1, of Article L. 133-12 and of the second subparagraph of paragraph I of Article L. 133-13, the conditions referred to in paragraph II are applicable in New Caledonia.

For the purposes of the provisions of Article L. 131-1-1, the words: “in euros” are replaced by the words: “in CFP francs.”

Articles L. 163-1 to L. 571-12 also apply there.

II. – a) For the purposes of the provisions of Article L. 131-1-1, the words: “in euros” are replaced by the words: “in CFP francs”.

b) If one of the payment service providers is located in New Caledonia and the other in Metropolitan France or in the overseas *départements*, Saint Barthélemy, Saint Martin, Mayotte or Saint Pierre and Miquelon, for the purposes of paragraph I of Article L. 133-13, the words: “by the close of the first business day” are replaced by the words: “by the close of the fourth business day”;

c) In the first subparagraph of paragraph II of Article L. 133-1, the words: “or in Saint Pierre and Miquelon and the transaction is carried out in euros” are replaced by the words: “in Saint Pierre and Miquelon, New-Caledonia, French Polynesia or the Wallis and Futuna Islands and the transaction is carried out in euros or in CFP francs”;

d) In paragraph I of Article L. 133-1-1, the words: “or in Mayotte” are replaced by the words: “in Mayotte, New Caledonia, French Polynesia or the Wallis and Futuna Islands”;

e) In the fourth paragraph of Article L. 133-14, the words: “in the overseas *départements*, Saint Martin, Saint Barthélemy, Mayotte or Saint Pierre and Miquelon” are replaced by the words: “in the overseas *départements*, Saint Martin, Saint Barthélemy, Mayotte, Saint Pierre and Miquelon, New Caledonia, French Polynesia or the Wallis and Futuna Islands”;

f) In paragraph II of Article L. 133-22, the words: “in paragraph II of Article L. 133-13” are replaced by the words: “in paragraph I of Article L. 133-13”.

A decree issued following consultation with the Conseil d'Etat determines the implementing provisions of this article.

#### Section III Financial dealings with foreign countries

##### Subsection 1 General provisions

Article L. 741-3. - Articles L. 151-1 to L. 151-4 and Article L. 165-1 are applicable in New Caledonia.

Article L. 165-1 is adapted as follows:

“Article L. 165-1. – The articles of the Customs Code in force in New Caledonia that correspond to II and XII of the Customs Code are applicable to breaches of the obligations set forth in Article L. 151-2.”

Decrees issued on the basis of the report from the Minister for Overseas France and from the Minister for the Economy determine the implementing provisions of Article L. 151-2.

## Chapter II Products

### Subsection 2 Reporting obligations

Article L. 741-4. - In New Caledonia, individuals must declare the sums, securities or assets that they transfer abroad or from abroad without recourse to the services of an institution subject to the provisions of Part I of Book V or of Chapters I to III of Part II of Book V.

A declaration shall be made for each transfer, with the exception of transfers of an amount below 1,193,317 CFP francs.

A decree issued following consultation with the Conseil d'Etat determines the implementing provisions of this article.

### Subsection 3 Detection and prosecution of offences

Article L. 741-5. I - Failure to discharge the obligations set forth in Article L. 741-4 shall incur a fine equal to one quarter of the sum to which the offence or attempted offence relates.

II - In the event of customs officers discovering an offence referred to in paragraph I, they shall confiscate the entire sum to which the offence or attempted offence relates for a period of six months. Said period may be renewed with the consent of the Public Prosecutor of the place where the customs authority handling the case is located but shall not exceed a total period of twelve months.

The sum confiscated shall be attached, and forfeiture thereof may be pronounced by the competent court if, during the period of confiscation, it is established that the perpetrator of the offence referred to in paragraph I is or was in possession of objects giving grounds for believing that he is or was also the perpetrator of one or more offences envisaged in and rendered illegal by the Customs Code applicable in New Caledonia, or that he is participating or has participated in the commission of such offences, or if there are plausible reasons for believing that the perpetrator of the offence referred to in paragraph I has also committed one or more offences envisaged in and rendered illegal by the Customs Code applicable in New Caledonia or that he has participated in the commission of such offences.

Dismissal of the charges, or acquittal and discharge, shall entail the lifting of the confiscation and attachment measures imposed, as of right, with the Trésor Public meeting the cost thereof. The same shall apply in the event of the cessation of an action seeking the application of tax penalties.

III - Detection, recording and prosecution of the offences referred to in paragraph I shall take place as determined in the Customs Code applicable in New Caledonia.

Article L. 741-6. The provisions of Articles L. 741-4 and L. 741-5 do not apply to financial dealings between New Caledonia, on the one hand, and Metropolitan France, Guadeloupe, French Guiana, Martinique, Réunion, Mayotte, Saint Pierre and Miquelon, the Wallis and Futuna Islands and French Polynesia, on the other.

### Section I Financial instruments

#### Subsection 1 Definition and general rules

Article L. 742-1. - I. – Articles L. 211-1 to L. 211-22, and L. 211-24 to L. 211-41, are applicable in New Caledonia, without prejudice to the adaptations provided for in paragraph II.

II. – The tax references of Articles L. 211-22 and L. 211-28 are replaced by references to the locally applicable provisions having the same object.

#### Subsection 2 Shares

Article L. 742-2. – Articles L. 212-1 A, L. 212-1, 212-2 and L. 212-4 to L. 212-7 are applicable in New Caledonia.

#### Subsection 3 Debt securities

##### Paragraph 1 Negotiable debt securities

Article L. 742-3. – Articles L. 213-1 A and L. 213-1 to L. 213-4-1 are applicable in New Caledonia, with the exception of subparagraph 5 of Article L. 213-3.

##### Paragraph 2 Bonds

Article L. 742-4. – Articles L. 213-5 and L. 231-6 and Article L. 231-1 are applicable in New Caledonia.

Article L. 742-5. – Article L. 213-7 is applicable in New Caledonia.

#### Subsection 4 Collective investment products

Article L. 742-6. – Chapter IV of Part I of Book II is applicable in New Caledonia, with the exception of subparagraph 4 of paragraph I of Article L. 214-1, subparagraph 4 of paragraph II of Article L. 214-34, Articles L. 214-39 to L. 214-41-1, (1), and Articles L. 214-85 to L. 214-88, with the following adaptation:

In Article L. 214-18, the words: “the provisions of Order No. 45-2710 of 2 November 1945 relating to investment firms, and” are deleted.

Articles L. 231-3 to L. 231-21 are also applicable in New Caledonia.

**NB: (1) Section 5 has not been supplemented**

## Section 2 Savings products

Article L. 742-6-1. – Articles L. 221-1 to L. 221-9 and L. 221-38 are applicable in New Caledonia, with the following adaptations:

1 In Articles L. 221-2, L. 221-4 and L. 221-6, the words: “the credit institution referred to in Article L. 518-25-1” are replaced by the words: “the Office des Postes et Télécommunications”;

2 In Article L. 221-3:

a) In the first paragraph, the words: “, to the associations referred to in paragraph 5 of Article 206 of the Code Général des Impôts and to low-income housing associations” are deleted;

b) In the third paragraph, the words: “or one special account with the Crédit Mutuel opened before 1 January 2009” are deleted;

3 In Article L. 221-5:

a) In the first paragraph, the words: “and *Livret de Développement Durable* savings accounts governed by Article L. 221-27” are deleted and the words: “one account or the other” are replaced by the words: “said account”;

b) In the second paragraph, the words: “and *Livret de Développement Durable* savings accounts” are deleted and the words: “said accounts” are replaced by the words: “said account”;

c) In the fourth, fifth and sixth paragraphs, the words: “or the *Livret de Développement Durable* savings account” are deleted;

d) In the fifth paragraph, the words: “those two accounts” are replaced by the words: “said account”;

4 In the first paragraph of Article L. 221-6, the words: “and those marketing the *Livret de Développement Durable*” are deleted;

5 In Article L. 221-8, the words: “as well as to special Crédit Mutuel savings accounts opened before 1 January 2009” are deleted.

Article L. 742-6-2. – Articles L. 221-35 and L. 221-37 are applicable in New Caledonia, without prejudice to the adaptations provided for in paragraph II.

II. — 1 Article L. 221-35 is supplemented by the following sentence: “Said provisions apply to the Office des Postes et Télécommunications.”

2 Article L. 221-37 is replaced by the following provisions:

“Article L. 221-37. - With regard to the credit institutions, specially designated officials of the Institut d’Émission d’Outre-Mer are authorised, in the performance of their duties, to seek to uncover violations of the provisions of Article L. 221-35 and to record them in a statement of offence.”

Article L. 742-7. Articles L. 223-1 to L. 223-4 and Articles L. 232-1 and L. 232-2 are applicable in New Caledonia.

## Chapter III Services

### Section I Banking transactions

#### Subsection 1 General provisions

Article L. 743-1. – Articles L. 311-1 to L. 311-4 are applicable in New Caledonia.

#### Subsection 2 Accounts and deposits

Article L. 743-2. - Chapter II of Part I of Book III is applicable in New Caledonia, with the exception of Articles L. 312-17 and 312-18.

Article L. 312-1 is adapted as follows:

1 Second paragraph:

a) In the second sentence, the words: “the Banque de France and request that it” are replaced by the words: “the Institut d’Émission d’Outre-Mer and request that it”;

b) In the third and fourth sentences, the words: “the Banque de France”, are replaced by the words: “the Institut d’Émission d’Outre-Mer”;

2 In the sixth and seventh paragraphs, all occurrences of the words: “the Banque de France” are replaced by the words: “the Institut d’Émission d’Outre-Mer”.

Articles L. 312-1 and L. 312-1-1 are applicable to the Office des Postes et Télécommunications.

#### Subsection 3 Loans

##### Paragraph 1 General provisions

Article L. 743-3. Articles L. 313-1 to L. 313-5-2 are applicable in New Caledonia. Article L. 351-1 also applies there.

##### Paragraph 2 Categories of loans

###### Subparagraph 1 Leasing

Article L. 743-4. Articles L. 313-7 to L. 544-11 are applicable in New Caledonia.

###### Subparagraph 2 Business loans

Article L. 743-5. - Articles L. 313-12, L. 313-12-1, L. 313-12-2, L. 313-21, L. 313-22, **L. 313-22-1** and L. 313-29-1 are applicable in New Caledonia.

For the purposes of the provisions of Article L. 313-12-2, the words: “The Banque de France” are replaced by the words: “The Institut d’Émission d’Outre-Mer”.

### Paragraph 3 Procedures relating to the discounting of business receivables

Article L. 743-6. – Articles L. 313-23 to L. 313-48 are applicable in New Caledonia.

### Paragraph 4 Surety guarantees

Article L. 743-7. – Articles L. 313-50 and L. 313-51 are applicable in New Caledonia.

## Section 2 Payment services

Article L. 743-1. – I. – Chapter IV of Part I of Book III, with the exception of the second subparagraph of paragraph II of Article L. 314-2 and of the second paragraph of Article L. 314-15, is applicable in New Caledonia, without prejudice to the adaptations provided for in paragraph II.

II. – 1 In the first subparagraph of paragraph II of Article L. 314-2, the words: “or in Saint Pierre and Miquelon and the transaction is carried out in euros” are replaced by the words: “in Saint Pierre and Miquelon, New Caledonia, French Polynesia or the Wallis and Futuna Islands and the transaction is carried out in euros or in CFP francs”;

**1 bis. In paragraphs I and II of Article L. 314-2-1, the words: “or in Saint Pierre and Miquelon” are replaced by the words: “in Saint Pierre and Miquelon, New Caledonia, French Polynesia or the Wallis and Futuna Islands”;**

2 a) The heading of subsection 4 of Section 4 of Chapter IV is: “Reporting obligations where one of the payment service providers involved in the transaction is located in Saint Pierre and Miquelon, Mayotte, New Caledonia, French Polynesia, the Wallis and Futuna Islands or outside the European Economic Area”;

b) In the first paragraph of Article L. 314-15, the words: “or in Mayotte” are replaced by the words: “in Mayotte, New Caledonia, French Polynesia, or the Wallis and Futuna Islands.”

## Section 3 Provisions applicable to credit institutions and payment institutions

Article L. 743-7-2. – Chapter V of Part I of Book III is applicable in New Caledonia.

Article L. 743-7-3. – I. – Chapter VI of Part I of Book III, with the exception of the third paragraph of Article L. 316-1, is applicable in New Caledonia, without prejudice to the adaptations provided for in paragraph II.

II. – 1 Paragraph 1 of Article L. 316-1 is replaced by the following provisions:

The officials of the Institut d’Émission d’Outre-Mer are authorised, in the performance of their duties, to seek to uncover violations of the provisions of Articles L. 312-1-1, L.

312-1-2, L. 314-12 and L. 314-13 of this code and to record them in a statement of offence.

2 In the second paragraph, the words: “The authorised officials referred to in the first paragraph” are replaced by the word: “they”.

## Section 4 Investment services and associated services

Article L. 743-8. – Part II of Book III is applicable in New Caledonia with the following adaptation: in Article L. 322-2 and Article L. 322-6, the reference to Articles L. 312-17 and L. 312-18 is deleted.

**For the purposes of these provisions, subparagraph 8 of Article L. 321-2 is worded as follows:**

**8. The credit rating service that consists of issuing an opinion through the application of a well-defined and well-established classification system that uses various rating categories indicative of the credit status of an entity, a debt, a financial obligation, a debt security, a preference share or other financial instrument, or of an issuer of such a debt or financial obligation, debt security, preference shares or other financial instrument.**

## Section 5 Payment systems and systems used for settlement and delivery of financial instruments

Article L. 743-9. - Articles L. 330-1 to L. 330-4 are applicable in New Caledonia, with the exception of the last sentence of paragraph I and of the eighth, ninth and last subparagraphs of paragraph II of Article L. 330-1.

## Section 6 Direct marketing

### Subsection 1 Direct marketing relating to banking transactions

Article L. 743-10. – I. – Articles L. 341-1 to L. 341-17 are applicable in New Caledonia with the following adaptations:

a) In subparagraph 2 of Article L. 341-2, the words: “referred to in Section 3 of Chapter I of Part V of Book IV of the Code de l’Urbanisme (Town Planning Code)” are deleted;

b) Subparagraph 1 of Article L. 341-3 is replaced by the following provisions:

1 The credit institutions referred to in Article L. 511-1, the institutions referred to in Article L. 518-1 and the investment firms referred to in Article L. 531-4; paragraph 2 of said article is deleted;

II - Articles L. 353-1 to L. 353-4 are also applicable in New Caledonia.



## Section III Trading in financial instruments

### Subsection 2 Direct marketing relating to futures market transactions

Article L. 743-11. – Chapter III of Part IV of Book III and Article L. 353-6 are applicable in New Caledonia.

## Chapter IV The Markets

### Section 1 Transactions

#### Subsection 1 Definitions and scope

Article L. 744-1. - Articles L. 411-1 to L. 411-4 are applicable in New Caledonia, with the following adaptation:

For the purposes of Article L. 411-4, the words: “and of Order No. 45-2138 of 19 September 1945 instituting the Order of Accountants and regulating the title and the profession of Accountant” are deleted.

#### Subsection 2 General provisions

Article L. 744-2. – Articles L. 412-1 to L. 412-3 are applicable in New Caledonia.

### Section 2 Trading platforms

Article L. 744-3. – Part II of Book IV is applicable in New Caledonia, with the exception of Article L. 421-13, the second subparagraph of paragraph II of Article L. 421-14, the eighth paragraph of Article L. 421-17, Articles L. 421-20, L. 422-1, L. 424-4, L. 424-9, L. 424-10 and L. 426-1, with the following adaptations:

a) In Article L. 421-2, the words: “in Metropolitan France or the overseas *départements*” are replaced by the words: “in France”;

b) In Articles L. 421-6 and L. 424-11, the date: “1 November 2007” is replaced by the date: “1 May 2008”.

Article L. 464-2 is also applicable in New Caledonia.

#### Subsection 1 General provisions

##### Paragraph 1 Transfer of title and pledging

Article L. 744-5. – Articles L. 211-18 and L. 211-19 are applicable in New Caledonia.

Article L. 744-6. – Article L. 211-20 is applicable in New Caledonia.

##### Paragraph 2 Clearing and assignment of receivables

Article L. 744-7. – Articles L. 211-36 to L. 211-40 are applicable in New Caledonia. In subparagraph 1 of Article L. 211-36, the words: “with the exception of the individuals and legal entities referred to in subparagraph 2 a)” are inserted after the words: “having the benefit of the provisions of Article L. 531-2”.

#### Subsection 2 Specific ways of selling financial instruments

##### Paragraph 1 Auctions

Article L. 744-8. – Article L. 211-21 is applicable in New Caledonia.

##### Paragraph 1 bis Temporary assignments

Article L. 744-8-1. – Articles L. 211-22 to L. 211-33 are applicable in New Caledonia. The tax provisions of Articles L. 211-22, L. 432-23 and L. 432-28 are replaced by locally applicable provisions of the Code Général des Impôts having the same object.

II - The provisions of Articles 211-22 to L. 211-26 apply likewise to the transfers with full title of securities, certificates or bills, by way of guarantee, provided for in paragraph I of Article L. 211-38 carried out within the framework of financial futures transactions executed on an over-the-counter market, the transfers of securities referred to in subparagraph 3 of Article L. 211-22 and the transfers referred to in Article L. 211-22.

##### Paragraph 2 Futures

Article L. 744-9. – Article L. 211-35 is applicable in New Caledonia.

### Subsection 3 Terms and conditions specific to the regulated markets

Article L. 744-10. - Chapter III of Part III of Book IV is applicable in New Caledonia, with the following adaptations:

**Article L. 433-3 is adapted as follows:**

**1 In paragraphs I and II, the words: “regulated market of a Member State of the European Union or of another State party to the European Economic Area Agreement” are replaced by the words: “French regulated market”;**

**2 In paragraph III, the words: “of a State party to the European Economic Area Agreement” are replaced by the word: “French”.**

**In paragraphs I and V of Article L. 433-4, the words: “regulated market of a Member State of the European Union or of another State party to the European Economic Area Agreement” are replaced by the words: “French regulated market”.**

## Section 4 Clearing houses

**Article L. 744-11. – I.** – Part IV of Book IV is applicable in New Caledonia, with the exception of the last two paragraphs of Article L. 440-2 and without prejudice to the adaptations provided for in paragraph II.

II. – Article L. 440-2 is adapted as follows:

1 In subparagraphs 1 and 2, the words: “in a Member State of the European Community or another State party to the European Economic Area Agreement” are replaced by the words: “in France”;

2 In subparagraph 4, the words: “Metropolitan” and “or in the overseas *départements*” are deleted;

3 In subparagraph 5, the words: “which is not a member of the European Community or party to the European Economic Area Agreement” are replaced by the words: “other than France” and the words: “in Metropolitan France or the overseas *départements*” are replaced by the words: “in France”;

4 In the seventh paragraph, the words: “Metropolitan” and “or in the overseas *départements*” are deleted.

III. – Article L. 464-1 is also applicable in New Caledonia.

## Section V Investor protection

### Subsection 1 Reporting obligations relating to accounts

Article L. 744-12. – I. – Articles L. 451-1-1, L. 451-1-2, L. 451-1-4, L. 451-1-6, L. 451-3, L. 465-1 and L. 465-2 are applicable in New Caledonia, without prejudice to the adaptations provided for in paragraph II.

II. – 1 For the purposes of Article L. 451-1-1:

a) The words: “of a State party to the European Economic Area Agreement” are replaced by the word: “French”;

b) The words: “in the European Economic Area or a third-party country” are replaced by the word: “abroad”;

2 For the purposes of Article L. 451-1-2:

a) In paragraph I, subparagraphs 1 and 3 of paragraph II, and paragraphs III and IV, the words: “of a State party to the European Economic Area Agreement” are replaced by the word “French”;

b) In subparagraph 3 of paragraph II, the words: “of the European Economic Area” are replaced by the words: “of France”.

### Subsection 2 Reporting obligations relating to equity investments

Article L. 744-13. – Articles L. 465-4 and L. 466-1 are applicable in New Caledonia.

## Chapter V Service Providers

Article L. 745-1. – Article L. 500-1, as well as Articles L. 570-1 and L. 570-2, are applicable in New Caledonia.

## Section I Banking sector institutions

### Subsection 1 Definitions and activities

Article L. 745-1-1. - Chapter I of Part I of Book V is applicable in New Caledonia, with the exception of Articles L. 511-12, L. 511-21 to L. 511-28 and subparagraphs 1, 3 and 4 of Article L. 511-34. Articles L. 571-1 to L. 571-9 also apply there.

**For the purposes of its provisions, the first paragraph of Article L. 511-46 is worded as follows:**

**“Within the credit institutions referred to in Article L. 511-1, the commission referred to in Article L. 823-19 of the Commercial Code also monitors the risk management policy, procedures and systems.”**

In Article L. 511-36, the words: “regulation of the European Commission” are replaced by the words: “order of the Minister for the Economy”.

The second paragraph of Article L. 571-4 is applicable to the Office des Postes et Télécommunications.

### Subsection 2 The Caisses d'Épargne et de Prévoyance

This subsection does not contain any legislative provisions.

### Subsection 3 Financial holding companies

#### Paragraph 1 Common provisions

Article L. 745-2. – Article L. 515-1 is applicable in New Caledonia.

#### Paragraph 2 Plant and real-estate leasing companies

Article L. 745-3. – Articles L. 515-2 and L. 515-3 and Article L. 571-13 are applicable in New Caledonia.

#### Paragraph 3 Mutual guarantee societies

Article L. 745-4. – Articles L. 515-4 to L. 515-12 are applicable in New Caledonia.

#### Paragraph 4 Real-estate credit companies

**Article L. 745-4-1. – Articles L. 515-13 to L. 515-33 are applicable in New Caledonia.**

#### Paragraph 5 Housing loan companies

**Article L. 745-4-2. – Articles 515-34 to L. 515-39 are applicable in New Caledonia.**

#### Subsection 4 Specialised financial institutions

Article L. 745-5. – Articles L. 516-1 and L. 516-2 are applicable in New Caledonia.

#### Subsection 5 Financial holding companies

Article L. 745-6. – Articles L. 517-1 et L. 571-14 are applicable in New Caledonia.

#### Subsection 6 Banking transaction intermediaries

Article L. 745-7. – Articles L. 519-1 to L. 519-6 and Articles L. 571-15 and L. 571-16 are applicable in New Caledonia.

### Section 1 bis Financial units of the Office des Postes et Télécommunications

Article L. 745-7-1. – The Office des Postes et Télécommunications may offer, for its own account or on behalf of other service providers and pursuant to the competition rules and the specific rules applicable to each of its fields of activity, services relating to the provision of means of

payment and funds transfer facilities, including, inter alia, postal cheques, payment cards, postal orders and cash-on-delivery facilities.

The *Livret A* account is marketed by the Office des Postes et Télécommunications as provided for in Articles L. 221-2 to L. 221-4, L. 221-6 to L. 221-9 and L. 221-38. Sums in excess of the upper limit indicated in Article L. 221-4 may be paid into the supplementary *Livret* referred to in Article L. 221-1 in its wording in force prior to the publication of Act No. 2008-776 of 4 August 2008 on the modernisation of the economy. The supplementary *Livret* shall bear interest at the same rate as the *Livret A* account. All the monies paid into said accounts are managed centrally by the Caisse des Dépôts et Consignations in the fund referred to in Article L. 221-7. The Office receives a commission under the terms of the decree referred to in the first paragraph of Article L. 221-6.

It may receive home-ownership savings scheme deposits on behalf of credit institutions approved pursuant to Article L. 511-10 and distribute residential mortgages as provided for in Articles L. 315-1 to L. 315-3 of the Building and Housing Code. It may also distribute other savings products on behalf of credit institutions approved pursuant to Article L. 511-10 or of investment firms approved pursuant to Article L. 532-1.

Article L. 745-7-2. – As an exception to Articles L. 745-1-1 and L. 745-10, the provisions of Chapters I to VII of Part I of Book V and those of Chapter II of Part III of that same Book are not applicable to the financial units of the Office des Postes et Télécommunications.

The orders of the Minister for the Economy issued pursuant to Articles L. 611-1, L. 611-3 and L. 611-4 and the rules of the Comité de la Réglementation Bancaire et Financière (Banking and Finance Regulatory Commission) and those of the Autorité des Normes Comptables (Accounting Standards Authority) may, subject to amendment as necessary, be extended to the financial units of the Office des Postes et Télécommunications as determined in a decree issued following consultation with the Conseil d'Etat.

The financial units of the Office des Postes et Télécommunications are subject to the scrutiny of the General Inspectorate of Finance (Inspection Générale des Finances).

Part VI of Book V relating to the prevention of money laundering, with the exception of Article L. 563-2, and Chapter IV of Part VII of said book apply to the Office des Postes et Télécommunications. In the event of the Office failing to meet its obligations in this regard, the General Inspectorate of Finance may refer the matter to the Autorité de Contrôle Prudentiel seeking the imposition of a penalty referred to in Article L. 612-39.

#### Subsection 1 Postal cheques and payment cards

Article L. 745-7-3. – The postal cheque service is administered by the Office des Postes et Télécommunications.

Subject to approval from the Office des Postes et Télécommunications, any person may open a postal current account.

Article L. 745-7-4. - Articles L. 131-1 to L. 131-15, L. 131-31 to L. 131-38, first paragraph, L. 131-39 to L. 131-46, L. 131-56 and L. 131-57, L. 131-59 and L. 131-60, L. 131-69 to L. 131-87, with the exception of the second sentence of the third paragraph of Article L. 131-71, L. 163-1 to L. 163-12 and L. 712-5 are applicable to the postal cheques drawn on the Office des Postes et Télécommunications.

Postal cheques are not endorsable.

In the event of payment of a postal cheque being refused, a certificate of non-payment shall be issued instead of a protest.

Article L. 745-7-5. – The holder of a postal current account shall be responsible for the consequences resulting from any improper use, loss or disappearance of the cheque forms issued to him by the Office des Postes et Télécommunications. Liability for any erroneous payment or transfer resulting from inaccurate or incomplete indications shall rest with the drawer of the cheque or the person requesting the transfer.

Article L. 745-7-6. – The balance on any postal current account on which there have been no movements or claims from the rightful owners for thirty years shall be acquired by New Caledonia.

Article L. 745-7-7. – The Office des Postes et Télécommunications is responsible for the sums it receives for the credit of postal current accounts.

Where in-payment orders are used, the provisions of Article L. 745-7-10 shall apply.

Article L. 745-7-8. – The Office des Postes et Télécommunications grants its guarantee to the recipients of payments made via the payment cards it issues.

#### Subsection 2 Postal orders

Article L. 745-7-9. – Funds may be transmitted by means of postal orders issued by the Office des Postes et Télécommunications.

Art. L. 745-7-10. – The Office des Postes et Télécommunications is responsible for the sums converted into postal orders until such time as they are paid.

Article L. 745-7-11. – Funds received by the Office des Postes et Télécommunications for transmission via an order of any kind shall be definitively acquired by New Caledonia if payment or reimbursement thereof is not requested within two years of the date on which they were received.

#### Subsection 3 Cash-on-delivery facilities

Article L. 745-7-12. – Items of mail may be sent on a cash-on-delivery basis under terms and conditions laid down by the Office des Postes et Télécommunications.

Article L. 745-7-13. – The obligations imposed on the bearer of a cheque by the laws and regulations cannot be raised against the Office des Postes et Télécommunications in connection with the payment of cheques received by it pursuant to this subsection.

Article L. 745-7-14. – The Office des Postes et Télécommunications is responsible for the sums which have, or should have, been collected as soon as the items are delivered to the debtor or to the addressee. Where said sums have been converted into postal orders or credited to a postal current account, the Office's responsibility is the same as it is for postal orders or postal cheques.

Article L. 745-7-15. – Claims relating to cash-on-delivery items shall be entertained for a period of two years with effect from posting.

## Section 2 Payment service providers and money changers

### Subsection 1 Payment service providers

Article L. 745-8. – Chapter I of Part II of Book V is applicable in New Caledonia. The Office des Postes et Télécommunications of New Caledonia is deemed to be a payment service provider but is not subject to the provisions of Chapter II of Book V where it provides payment services that are within the scope of the legal provisions that govern it.

Articles L. 572-5 to L. 571-12 also apply there.

### Subsection 2 Payment institutions

Article L. 745-8-1. – Chapter II of Part II of Book V, with the exception of Articles L. 522-12 and L. 522-13, is applicable in New Caledonia.

### Subsection 3 Agents

Article L. 745-8-2. – Chapter III of Part II of Book V, with the exception of Article L. 523-4, is applicable in New Caledonia.

### Subsection 4 Money changers

Article L. 745-8-3. – Articles L. 524-1 to L. 524-7, as well as Articles L. 572-1 to L. 572-4, are applicable in New Caledonia.



## Section III Investment service providers

### Subsection 1 Definitions

Article L. 745-9. – Chapter I of Part III of Book V is applicable in New Caledonia with the following adaptation:

a) In Article L. 531-2, the words: “and without being entitled to claim the benefit of the provisions of Articles L. 532-16 to L. 532-27” are deleted;

b) In Article L. 531-10, the words: “or an entity referred to in Article L. 532-18 or Article L. 532-18-1” are deleted.

### Subsection 2 Conditions of admission to the profession

Article L. 745-10. – Chapter II of Part III of Book V, with the exception of Articles L. 532-16 to L. 532-27, is applicable in New Caledonia.

a) In the last paragraph of Article L. 532-1, the words: “have either been authorised in another Member State of the European Community or which do not come under the law of one of those States” are replaced by the words: “have been approved in a State other than France”;

In Article L. 532-5, the words: “and shall have the benefit of the provisions of Articles L. 532-23 to L. 532-25” are deleted.

### Subsection 3 Obligations of investment service providers

Article L. 745-11. – Chapter III of Part III of Book V is applicable in French Polynesia.

Articles L. 573-1 to L. 573-7 also apply there.

## Section 4 Other service providers

Article L. 745-11-1. – Articles L. 541-1 to L. 541-7 and Articles L. 541-8-1 and L. 541-9, as well as Articles L. 573-9 to L. 573-11, are applicable in New Caledonia.

Article L. 745-11-2. – Article L. 542-1 is applicable in New Caledonia.

Art. L. 745-11-2-1. – Article L. 543-1 is applicable in New Caledonia, with deletion of the words: “the management companies of the forestry investment companies”.

Article L. 745-11-3. – Articles L. 544-1 to L. 544-6 are applicable in New Caledonia.

**For the purposes of these provisions:**

**In the first paragraph of Article L. 544-4, the words: “within the meaning of Article 22 of Regulation (EC) No. 1060/2009 of the European Parliament and the Council, of 16 September 2009, on the credit rating agencies” are deleted.**

**The term “Credit rating agency” shall mean any legal entity whose activities include the issuing of credit ratings on a professional basis, “credit rating” shall mean any opinion issued through the application of a well-defined and well-established classification system that uses various rating categories indicative of the credit status of an entity, a debt, a financial obligation, a debt security, preference shares or other financial instruments, or of an issuer of such a debt, financial obligation or debt security, or of such preference shares or such a financial instrument, and “credit rating service” shall mean the activities of analysing data and information and evaluating, approving, issuing and re-examining credit ratings.**

Article L. 745-11-4. – Articles L. 545-1 to L. 545-7 are applicable in New Caledonia with the following adaptation:

a) In Article L. 545-1, the words: “within the meaning of subparagraph 25 of paragraph 1 of Article 4 of Directive 2004/34/EC of 21 April 2004” are deleted;

b) In Article L. 545-5, the words: “in Metropolitan France or in the overseas *départements*” are replaced by the words: “in France”;

c) For the purposes of Articles L. 545-1 to L. 545-7, the term “bound agent” shall mean any individual or legal entity who/which, under the entire and unconditional responsibility of a sole and unique investment service provider on behalf of which he/it acts, promotes investment services to clients, inter alia potential clients, receives and forwards the clients' instructions or orders relating to financial instruments or investment services, places financial instruments, or provides clients, inter alia potential clients, with advice on said instruments or services.

**Article L. 745-11-5. – Articles L. 546-1 to L. 546-4 are applicable in New Caledonia. For the purposes of these provisions, in Article L. 546-1, the words: “the sole register referred to in Article L. 512-1 of the Insurance Code” are replaced by the words: “the register referred to in Article 1 of Act No. 2005-1564 of 15 December 2005 introducing various provisions to bring French law into line with Community law in the field of insurance”.**

## Section 5 Miscellaneous property intermediaries

Article L. 745-12. – Part V of Book V is applicable in New Caledonia.

Article L. 573-8 also applies there.

## Section 6 Obligations relating to the prevention of money laundering

Article L. 745-13. – I. – Part VI of Book V and Articles L. 574-1 to L. 574-4 are applicable in New Caledonia as provided for in paragraph II.

**II. – 1 In Articles L. 561-2 and L. 561-20, the references to the Insurance Code, the Mutuality Code and the Social Security Code are replaced by references to locally applicable provisions having the same object;**

2 In subparagraph 8 of Article L. 561-2, the references in Article 1 of Act No. 70-9 of 2 January 1970 regulating the conditions of practice of the activities pertaining to certain transactions in real-estate and goodwill, excluding exchanges, letting or sub-letting, seasonal or otherwise, whether unfurnished or furnished, are replaced by references to locally applicable provisions having the same object;

3 In subparagraph 12 of Article L. 561-2, the reference to Order No. 45-2138 of 19 September 1945 instituting the Order of Accountants and regulating the title and the profession of Accountant is replaced by references to locally applicable provisions having the same object;

4 In subparagraph 13 of Article L. 561-2, the terms court-appointed administrator, court-appointed receiver, and court-appointed auctioneer and valuer shall designate the equivalent professions regulated in accordance with the locally applicable provisions;

5 For the application in New Caledonia of Article L. 561-14-2, the references to Article 537 of the Code Général des Impôts and to Articles L. 83, L. 85, L. 87 and L. 89 of the Livre des Procédures Fiscales are replaced by references to the locally applicable provisions having the same object;

6 For the application in New Caledonia of the provisions of paragraph II of Article L. 561-15, either the offence referred to in the provisions of Article 1741 of the Code Général des Impôts committed by the individuals or entities to whom/which said provisions apply, or, for the individuals or entities subject to the locally established tax regulations, the fact of having fraudulently evaded or of having attempted to fraudulently evade the calculation or the partial or total payment of the taxes referred to therein, shall be deemed to constitute tax fraud;

7 For the application in New Caledonia of the provisions of the last subparagraph of paragraph II of Article L. 561-23, the offence described in Article 1741 shall constitute the offence of tax fraud within the meaning of the provisions of subparagraph 6 of paragraph II of this article;

8 For the application in New Caledonia of the third and fourth subparagraphs of paragraph II of Article L. 561-29, the offence described in Article 1741 of the Code Général des Impôts shall constitute the offence of tax fraud within the meaning of the provisions of subparagraph 6 of paragraph II of this article. Where the unit referred to in Article L. 561-23 has received information concerning acts of fraudulent evasion or of tentative fraudulent evasion of the calculation or of the partial or total payment of the taxes due under the locally established tax regulations, it may send it to the tax authority of New Caledonia. It may also send the tax authority of the territorial community information concerning any laundering of tax fraud proceeds carried out in violation of the local regulations. In this case, the tax authority of the territorial community shall forward it to the Public Prosecutor after obtaining the approval of the Commission des Offences Fiscales referred to in Article 1741 A of the Code Général des Impôts. Said commission shall rule on the reasonably perceivable substance of the suspicions of tax fraud reported to the unit referred to in Article L. 561-23 of this code;

10 In subparagraphs 5, 6 and 7 of Article L. 561-36, the references made respectively to the Chambers of the notaries and to Order No. 45-2590 of 2 November 1945 relating to the status of the notarial profession, to the local Chambers of the bailiffs and to Order No. 45-2592 of 2 November 1945 relating to the status of the bailiffs and to the Disciplinary Chamber of the court-appointed auctioneers and valuers and to Part II of

Book VIII of the Commercial Code are replaced by the references to the authorities exercising the power of supervision and sanction over said professions in accordance with the locally applicable regulations and locally applicable provisions having the same object;

11 10 In subparagraphs 9 and 11 of Article L. 561-36, the references respectively made to Part I of Book VIII of the Commercial Code and to Order No. 45-2138 of 19 September 1945 instituting the Order of Accountants and regulating the title and the profession of Accountant are replaced by the references to the locally applicable provisions having the same object;

12 The authorities responsible for monitoring compliance with the obligations referred to in Chapter I of Part V by the entities referred to in subparagraphs 5, 6, 7, 9, 11 and 12 of paragraph I of Article L. 561-36 shall arrange to receive the documents pertaining to compliance with said obligations as determined in a decree issued following consultation with the Conseil d'Etat;

13 In paragraph II of Article L. 561-36, the words: “, the bodies referred to in Article L. 134-1 of the Tax Courts Code” are deleted.

## **Chapter VI Banking and Financial Authorities**

### **Section I Authorities common to credit institutions, payment institutions and investment firms**

#### **Subsection 1 Regulations**

Article L. 746-1. – Chapter I of Part I of Book VI is applicable in New Caledonia.

#### **Subsection 2 The Autorité de Contrôle Prudentiel**

Article L. 746-2. – I. – In the circumstances envisaged in paragraphs II and III, Chapter II of Part I of Book VI is applicable in New Caledonia, with the exception of subparagraph 3 of Article L. 612-1 and of Articles L. 612-22 and L. 612-29.

II. – 1 The Autorité de Contrôle Prudentiel supervises the entities enumerated in subparagraph B of paragraph I of Article L. 612-2 and in subparagraphs 1 and 2 of paragraph II of said article solely with regard to compliance with the provisions of Part VI of Book V;

2 In the event of an entity referred to in subparagraph B of paragraph I of Article L. 612-2 failing to comply with the provisions of Part VI of Book V, the Enforcement Commission of the Autorité de Contrôle Prudentiel may impose on it one or more disciplinary sanctions as provided for in Articles L. 612-38 and L. 612-39;

3 In the event of an entity referred to subparagraphs 1 and 2 of paragraph II of Article L. 612-2 failing to comply with the provisions of Part VI of Book V, the Enforcement Commission of the Autorité de Contrôle Prudentiel may impose one or more

disciplinary sanctions on it or, where appropriate, on its senior managers or partners, or third parties, having management or administrative powers, as provided for in Article L. 612-38 and paragraph I of Article L. 612-41;

The provisions of Articles L. 612-16, L. 612-28 and L. 612-42 shall apply to the breaches giving rise to the imposition of sanctions pursuant to subparagraphs 2 and 3;

5 Article L. 612-20 shall not apply to the entities referred to in subparagraph B of paragraph I of Article L. 612-2 and in subparagraphs 1 and 2 of paragraph II of said article. Said entities are required to make a contribution towards the cost of supervising the obligations laid down in Part VI of Book V. Said contribution shall be paid to the Banque de France. The amount thereof is determined by order of the Ministers for the Economy, for the Mutual Societies and for Social Security.

III. – 1 The references to the Insurance Code, the Social Security Code and the Mutuality Code in Articles L. 612-1, L. 612-2, L. 612-3 and L. 612-33 are replaced by references to locally applicable provisions having the same object;

2 In Article L. 612-39, the words: “and the additional requirements referred to in the second paragraph of Article L. 334-1 of the Insurance Code” are deleted.

Article L. 641-1 is also applicable in New Caledonia.

Article L. 746-2-1. – The Autorité de Contrôle Prudentiel may define the terms under which it shall lend its support to the government of New Caledonia through an agreement which provides for an allocation of resources by said government.

#### Subsection 3 Provisions specific to credit institutions, investment firms and payment institutions

Article L. 746-3. – Chapter III of Part I of Book VI is applicable in New Caledonia, with the exception of Articles L. 613-31-1 to L. 613-31-10 and L. 613-33.

Article L. 641-2 also applies there.

#### Subsection 4 Comité Consultatif du Secteur Financier and Comité Consultatif de la Législation et de la Réglementation Financières

Article L. 746-4. – Articles L. 614-1 to L. 614-3 are applicable in New Caledonia with the following adaptations:

- in the first paragraph of Article L. 614-1, the words: “and insurance companies” are deleted;

- in the first paragraph of Article L. 614-2, the words: “and any proposed Community regulation or directive, before it is examined by the Council of the European Communities,” and the words: “to the insurance sector,” are deleted.

#### Subsection 5 Other institutions

Article L. 746-4-1. – Articles L. 615-1 and L. 615-2 are applicable in New Caledonia.

## Section 2 The Autorité des Marchés Financiers

Article L. 746-5. – I. – Articles L. 621-1 to L. 621-7-2, paragraphs I, II, III, IV, VII, VIII and IX of Article L. 621-8, Articles L. 621-8-1, L. 621-8-2, L. 621-9, with the exception of its last paragraph, L. 621-9-1 to L. 621-20-1, L. 621-22 to L. 621-35 and Articles L. 642-1 and L. 642-3 are applicable in New Caledonia, without prejudice to the adaptations provided for in paragraph II.

II. – 1 For the purposes of paragraph I of Article L. 621-8:

a) In paragraph I, the words: “or any equivalent document required under the legislation of another State party to the European Economic Area Agreement” are deleted;

b) Paragraph III is worded as follows:

III. – The draft document referred to in paragraph I is also subject to the prior approval of the Autorité des Marchés Financiers in the cases specified in its General Regulation for any transaction carried out in France where the registered office of the issuer of the securities which are the subject of the transaction is outside the European Economic Area and where the transaction involves financial instruments whose initial public offer or assignment or first admission to a regulated market took place in France;

**2 In subparagraph d) of paragraph II of Article L. 621-15, the words: “of another Member State of the European Union or a State party to the European Economic Area Agreement” are replaced by the word: “French”. (1)**

2 For the purposes of Article L. 621-32, the words: “pursuant to Directive 2003/125/EC of the Commission of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the fair presentation of investment recommendations and disclosure of conflicts of interest” are deleted.

**NB: (1) ACT No. 2010-1249 of 22 October 2010 Art. 85 III 15: this act supplements Article L. 746-5 by adding a second subparagraph 2 to the pre-existing subparagraph 2.**

## Section 3 Cooperation and exchanges of information

Article L. 746-8. – I. – Articles L. 631-1, L. 631-2, **L. 631-2-1, L. 631-2-2**, L. 632-3, L. 632-7 and L. 632-13 to L. 632-17 are applicable in New Caledonia, without prejudice to the adaptations provided for in paragraph II.

II. – 1 In paragraphs I and II of Article L. 632-7 and in Article L. 632-13, the words: “which is not a Member State of the European Community and not party to the European Economic Area Agreement,” are replaced by the words: “other than France”;

2 In paragraph III of Article L. 632-7, the words: “of another Member State of the European Community or another State party to the European Economic Area Agreement or a third-party country” are replaced by the words: “other than France”;

3 In Article L. 632-14:

a) In the first and fourth paragraphs, the words: “of Articles L. 632-12 and L. 632-13” are replaced by the words: “of Article L. 632-13”;

b) In the second paragraph, the words: “Articles L. 632-12 and L. 632-13” are replaced by the words: “Article L. 632-13”;

4 In Article L. 632-15:

a) The words: “Articles L. 632-12 and L. 632-13” are replaced by the words: “Article L. 632-13”;

b) The words: “and not party to the European Economic Area Agreement” are replaced by the words: “other than France”;

5 In Article L. 632-16:

a) In the first and second paragraphs, the words: “which is not a Member State of the European Community and not party to the European Economic Area Agreement” are replaced by the words: “other than France”;

b) In the third paragraph, the words: “of Article L. 632-5 and of paragraph III of Article L. 632-7” are replaced by the words: “of paragraph III of Article L. 632-7”;

c) A paragraph has been added, worded as follows:

The Autorité des Marchés Financiers and the Autorité de Contrôle Prudentiel may refuse to accede to requests from the authorities of foreign States relating to the activities referred to in the first paragraph only where the nature thereof is likely to undermine French sovereignty, security or public order, or where criminal proceedings have already been instituted in France on the basis of the same facts and against the same entities, or where said entities have already been sanctioned for the same facts by a final decision.

Article L. 751-2. – I. – Articles L. 131-1 to L. 131-87, with the exception of the second sentence of the third paragraph of Article L. 131-71, as well as Chapter III of Part III, with the exception of the second subparagraph of paragraph II of Article L. 133-1, of Article L. 133-12 and of the second subparagraph of paragraph I of Article L. 133-13, are applicable in French Polynesia as provided for in paragraph II.

For the purposes of the provisions of Article L. 131-1-1, the words: “in euros” are replaced by the words: “in CFP francs.”

Articles L. 163-1 to L. 163-12 also apply there.

II. – a) For the purposes of the provisions of Article L. 131-1-1, the words: “in euros” are replaced by the words: “in CFP francs”.

b) If one of the payment service providers is located in French Polynesia and the other is in Metropolitan France, the overseas *départements*, Saint Barthélemy, Saint Martin, Mayotte or Saint Pierre and Miquelon, for the purposes of paragraph I of Article L. 133-13, the words: “at the close of the first business day” are replaced by the words: “at the close of the fourth business day”;

c) In the first subparagraph of paragraph II of Article L. 133-1, the words: “or in Saint Pierre and Miquelon and the transaction is carried out in euros” are replaced by the words: “in Saint Pierre and Miquelon, New Caledonia, French Polynesia or the Wallis and Futuna Islands and the transaction is carried out in euros or in CFP francs”;

d) In paragraph I of Article L. 133-1-1, the words: “or in Mayotte” are replaced by the words: “in Mayotte, in New Caledonia, in French Polynesia or the Wallis and Futuna Islands”;

e) In the fourth paragraph of Article L. 133-14, the words: “in the overseas *départements*, Saint Martin, Saint Barthélemy, Mayotte or Saint Pierre and Miquelon” are replaced by the words: “in the overseas *départements*, Saint Martin, Saint Barthélemy, Mayotte, Saint Pierre and Miquelon, New Caledonia, French Polynesia or the Wallis and Futuna Islands”;

f) In paragraph II of Article L. 133-22, the words: “in paragraph I of Article L. 133-13” are replaced by the words: “in paragraph I of Article L. 133-13”.

A decree issued following consultation with the Conseil d'Etat determines the implementing provisions of this article.

## Part V PROVISIONS APPLICABLE IN FRENCH POLYNESIA

### Chapter I The Currency

#### Section 1 Rules for the use of the currency

Article L. 751-1. – Articles L. 112-6, L. 112-7, L. 112-11 and L. 112-12 are applicable in French Polynesia.

#### Section 2 Bank money instruments

### Section III Financial dealings with foreign countries

#### Subsection 1 General provisions

Article L. 751-3. – Articles L. 151-1 to L. 151-4 and Article L. 165-1 are applicable in French Polynesia. Article L. 165-1 is adapted as follows:

“Art. L. 165-1. – The articles of the Customs Code in force in French Polynesia that correspond to paragraphs II and XII of the Customs Code are applicable to breaches of the obligations set forth in Article L. 151-2.”

Decrees issued on the basis of the report from the Minister for Overseas France and from the Minister for the Economy determine the implementing provisions of Article L. 151-2.



## Chapter II Products

### Subsection 2 Reporting obligations

Article L. 751-4. - In French Polynesia, individuals must declare the sums, securities or assets that they transfer abroad or from abroad without recourse to the services of an institution subject to the provisions of Part I of Book V or of Chapters I to III of Part II of Book V.

A declaration shall be made for each transfer, excluding transfers of an amount below 1,193,317 CFP francs.

A decree issued following consultation with the Conseil d'Etat determines the implementing provisions of this article.

### Subsection 3 Detection and prosecution of offences

Article L. 751-5. – Failure to discharge the obligations set forth in Article L. 751-4 shall incur a fine equal to one quarter of the sum to which the offence or attempted offence relates.

**II. – In the event of customs officers discovering an offence referred to in paragraph I, they shall confiscate the entire sum to which the offence or attempted offence relates for a period of six months. Said period may be renewed with the consent of the Public Prosecutor having jurisdiction over the place where the customs authority handling the case is located but shall not exceed a total period of twelve months.**

The sum confiscated shall be attached, and forfeiture thereof may be pronounced by the competent court if, during the period of confiscation, it is established that the perpetrator of the offence referred to in paragraph I is or was in possession of objects giving grounds for believing that he is or was also the perpetrator of one or more offences envisaged in and rendered illegal by the Customs Code, or that he is participating or has participated in the commission of such offences, or if there are plausible reasons for believing that the perpetrator of the offence referred to in paragraph I has also committed one or more offences envisaged in and rendered illegal by the Customs Code or has participated in the commission of such offences.

Dismissal of the charges, or acquittal and discharge, shall entail the lifting of the confiscation and attachment measures imposed, as of right, with the Trésor Public meeting the cost thereof. The same shall apply in the event of the cessation of an action seeking the application of tax penalties.

III. - Detection, recording and prosecution of the offences referred to in paragraph I shall take place as determined in the Customs Code applicable in French Polynesia.

Article L. 751-6. – The provisions of Articles L. 751-4 and L. 751-5 do not apply to financial dealings between French Polynesia, on the one hand, and Metropolitan France, Guadeloupe, French Guiana, Martinique, Réunion, Mayotte, Saint Pierre and Miquelon, New Caledonia and the Wallis and Futuna Islands, on the other.

## Section I Financial instruments

### Subsection 1 Definition and general rules

Article L. 752-1. - I. – Articles L. 211-1 to L. 211-22 and L. 211-24 to L. 211-41 are applicable in French Polynesia, without prejudice to the adaptations provided for in paragraph II.

II. – 1 The tax references of Articles L. 211-22 and L. 211-28 are replaced by references to the locally applicable provisions having the same object;

2 In Articles L. 211-2, L. 211-4, L. 211-5, L. 211-10, L. 211-20 and L. 211-40, the references to the Commercial Code are replaced by references to the locally applicable provisions having the same object;

3 In subparagraph 3 of Article L. 211-22 and in Article L. 211-35, the references to the Civil Code are replaced by references to the locally applicable provisions having the same object.

### Subsection 2 Shares

Article L. 752-2. – Articles L. 212-1 A, L. 212-1 and Article L. 212-2, as well as Articles L. 212-4 and L. 212-12, are applicable in French Polynesia.

### Subsection 3 Debt securities

#### Paragraph 1 Negotiable debt securities

Article L. 752-3. – Articles L. 213-1 A and L. 213-1 to L. 213-4-1 are applicable in French Polynesia, with the exception of subparagraph 5 of Article L. 213-3.

#### Paragraph 2 Bonds

Article L. 752-4. – Articles L. 213-5 and L. 213-6, as well as Article L. 231-1, are applicable in French Polynesia.

Article L. 752-5. – Article L. 213-7 is applicable in French Polynesia.

### Subsection 4 Collective investment products

Article L. 752-6. – Chapter IV of Part I of Book II is applicable in French Polynesia, with the exception of subparagraph 4 of paragraph I of Article 214-1, subparagraph 4 of paragraph II of L. 214-34, Articles L. 214-39 to L. 214-41-1, **(1)**, and of Articles L. 214-85 to L. 214-88, with the following adaptation:

In Article L. 214-18, the words: “the provisions of Order No. 45-2710 of 2 November 1945 relating to investment firms, and” are deleted.

For the purposes of Articles L. 214-43, L. 214-148, L. 214-152, L. 214-154, L. 214-155 and L. 214-158 the references to the Commercial Code are replaced by the references to the locally applicable provisions having the same object.

Articles L. 231-3 to L. 231-21 are also applicable in New Caledonia.

**NB: (1) Section 5 has not been supplemented**

**Section 2 Savings products**

Article L. 752-6-1. – Articles L. 221-1 to L. 221-9 and L. 221-38 are applicable in French Polynesia, with the following adaptations:

1 In Articles L. 221-2, L. 221-4 and L. 221-6, the words: “the credit institution referred to in Article L. 518-25-1” are replaced by the words: “the Office des Postes et Télécommunications”;

2 In Article L. 221-3:

a) In the first paragraph, the words: “, to the associations referred to in paragraph 5 of Article 206 of the Code Général des Impôts and to low-income housing associations” are deleted;

b) In the third paragraph, the words: “or one special account with the Crédit Mutuel opened before 1 January 2009” are deleted;

3 In Article L. 221-5:

a) In the first paragraph, the words: “and *Livret de Développement Durable* savings accounts governed by Article L. 221-27” are deleted and the words: “one account or the other” are replaced by the words: “said account”;

b) In the second paragraph, the words: “and *Livret de Développement Durable* savings accounts” are deleted and the words: “said accounts” are replaced by the words: “said account”;

c) In the fourth, fifth and sixth paragraphs, the words: “or the *Livret de Développement Durable* savings account” are deleted;

d) In the fifth paragraph, the words: “those two accounts” are replaced by the words: “said account”;

4 In the first paragraph of Article L. 221-6, the words: “and those marketing the *Livret de Développement Durable*” are deleted;

5 In Article L. 221-8, the words: “as well as to special Crédit Mutuel savings accounts opened before 1 January 2009” are deleted.

Article L. 752-6-2. - I. — Articles L. 221-35 and L. 221-37 are applicable in French Polynesia, without prejudice to the adaptations provided for in paragraph II.

II. — 1 Article L. 221-35 is supplemented by the following sentence: “Said provisions apply to the Office des Postes et Télécommunications”.

2 Article L. 221-37 is replaced by the following provisions:

“Article L. 221-37. - With regard to the credit institutions, the officials of the Institut d’Émission d’Outre-Mer are authorised, in the performance of their duties, to seek to uncover violations of the provisions of Article L. 221-35 and to record them in a statement of offence.”

Article L. 752-7. – Articles L. 223-1 to L. 223-4, and Articles L. 232-1 and L. 232-2, are applicable in French Polynesia.

## Chapter III Services

### Section I Banking transactions

#### Subsection 1 General provisions

Article L. 753-1. – Articles L. 311-1 to L. 311-4 are applicable in French Polynesia.

#### Subsection 2 Accounts and deposits

Article L. 753-2. - Chapter II of Part I of Book III is applicable in French Polynesia, with the exception of Articles L. 312-17 and L. 312-18.

Article L. 312-1 is adapted as follows:

1 Second paragraph:

a) In the second sentence, the words: “the Banque de France to enable it” are replaced by the words: “the Institut d’Émission d’Outre-Mer to enable it”;

b) In the third and fourth sentences, the words: “the Banque de France”, are replaced by the words: “the Institut d’Émission d’Outre-Mer”;

2 In the sixth and seventh paragraphs, all occurrences of the words: “the Banque de France” are replaced by the words: “the Institut d’Émission d’Outre-Mer”.

Articles L. 312-1 and L. 312-1-1 are applicable to the Office des Postes et Télécommunications.

#### Subsection 3 Loans

##### Paragraph 1 General provisions

Article L. 753-3. – Articles L. 313-1 to L. 313-5-2 are applicable in French Polynesia. Article L. 351-1 also applies there.

##### Paragraph 2 Categories of loans

###### Subparagraph 1 Leasing

Article L. 753-4. – Articles L. 313-7 to L. 313-11 are applicable in French Polynesia.

Subparagraph 2 Business loans

Article L. 753-5. - Articles L. 313-12, L. 313-12-1, L. 313-12-2, L. 313-21, L. 313-22, **L. 313-22-1** and L. 313-29-1 are applicable in French Polynesia.

For the purposes of the provisions of Article L. 313-12-2, the words: “The Banque de France” are replaced by the words: “The Institut d’Émission d’Outre-Mer”.

Paragraph 3 Procedures relating to the discounting of business receivables

Article L. 753-6. – Articles L. 313-23 to L. 313-48 are applicable in French Polynesia.

**For the purposes of Articles L. 313-42 and L. 313-48, the references to the Commercial Code are replaced by the references to locally applicable provisions having the same object.**

Paragraph 4 Security guarantees

Article L. 753-7. – Articles L. 313-50 and L. 313-51 are applicable in French Polynesia.

Section 2 Payment services

Article L. 753-7-1. – I. – Chapter IV of Part I of Book III, with the exception of the second subparagraph of paragraph II of Article L. 314-2 and of the second paragraph of Article L. 314-15, is applicable in French Polynesia, without prejudice to the adaptations provided for in paragraph II.

II. – 1 In the first subparagraph of paragraph II of Article L. 314-2, the words: “or in Saint Pierre and Miquelon and the transaction is carried out in euros” are replaced by the words: “in Saint Pierre and Miquelon, New Caledonia, French Polynesia or the Wallis and Futuna Islands and the transaction is carried out in euros or in CFP francs”;

**1 bis. In paragraphs I and II of Article L. 314-2-1, the words: “or in Saint Pierre and Miquelon” are replaced by the words: “in Saint Pierre and Miquelon, New Caledonia, French Polynesia or the Wallis and Futuna Islands”;**

2 a) The heading of subsection 4 of Section 4 of Chapter IV is: “Reporting obligations where one of the payment service providers involved in the transaction is located in Saint Pierre and Miquelon, Mayotte, New Caledonia, French Polynesia, the Wallis and Futuna Islands or outside the European Economic Area”;

b) In the first paragraph of Article L. 314-15, the words: “or in Mayotte” are replaced by the words: “in Mayotte, in New Caledonia, in French Polynesia or the Wallis and Futuna Islands.”

Section 3 Provisions applicable to credit institutions and payment institutions

Art. L. 753-7-2. – Chapter V of Part I of Book III is applicable in French Polynesia.

Article L. 753-7-3. – I. – Chapter VI of Part I of Book III, with the exception of the third paragraph of Article L. 316-1, is applicable in French Polynesia, without prejudice to the adaptations provided for in paragraph II.

II. – 1 The first paragraph of Article L. 316-1 is replaced by the following provisions:

“The officials of the Institut d’Émission d’Outre-Mer are authorised, in the performance of their duties, to seek to uncover violations of the provisions of Articles L. 312-1-1, L. 312-1-2, L. 314-12 and L. 314-13 of this code and to record them in a statement of offence.”;

2 In the second paragraph, the words: “The authorised officials referred to in the first paragraph” are replaced by the word: “they”.

Section 4 Investment services and associated services

Article L. 753-8. – Part II of Book III is applicable in French Polynesia.

In Articles L. 322-2 and L. 322-6, the reference to Articles L. 312-17 and L. 312-18 is deleted.

**For the purposes of these provisions, subparagraph 8 of Article L. 321-2 is worded as follows:**

**8. The credit rating service that consists of issuing an opinion through the application of a well-defined and well-established classification system that uses various rating categories indicative of the credit status of an entity, a debt, a financial obligation, a debt security, a preference share or other financial instrument, or of an issuer of such a debt or financial obligation, debt security, preference shares or other financial instrument.**

Section 5 Payment systems and systems used for settlement and delivery of financial instruments

Article L. 753-9. - Articles L. 330-1 to L. 330-4 are applicable in French Polynesia with the exception of the last sentence of paragraph I and the eighth, ninth and last subparagraphs of paragraph II of Article L. 330-1. In Article L. 330-2, the reference to Book VI of the Commercial Code is replaced by the reference to the provisions applicable in French Polynesia having the same object.

Section 6 Direct marketing

Subsection 1 Direct marketing relating to banking transactions

Article L. 753-10. – Articles L. 341-1 to L. 341-17 are applicable in French Polynesia with the following adaptations:

a) In subparagraph 2 of Article L. 341-2, the words: “referred to in Section 3 of Chapter I of Part V of Book IV of the Town Planning Code” are deleted;

b) Subparagraph 1 of Article L. 341-3 is replaced by the following provisions:

1 The credit institutions referred to in Article L. 511-1, the institutions referred to in Article L. 518-1 and the investment firms referred to in Article L. 531-4; paragraph 2 of that same article is deleted;

Articles L. 353-1 to L. 353-4 are also applicable in French Polynesia.

#### Subsection 2 Direct marketing relating to futures market transactions

Article L. 753-11. – Chapter III of Part IV of Book III and Article L. 353-6 are applicable in French Polynesia.

## Chapter IV The Markets

### Section 1 Transactions

#### Subsection 1 Definitions and scope

Article L. 754-1. – Articles L. 411-1 to L. 411-4 are applicable in French Polynesia with the following adaptation:

For the purposes of Article L. 411-4, the words: “and of Order No. 45-2138 of 19 September 1945 instituting the Order of Accountants and regulating the title and the profession of Accountant” are deleted.

#### Subsection 2 General provisions

Article L. 754-2. – Articles L. 412-1 to L. 412-3 are applicable in French Polynesia.

### Section 2 Trading platforms

Article L. 754-3. – Part II of Book IV is applicable in French Polynesia, with the exception of Article L. 421-13, the second subparagraph of paragraph II of Article L. 421-14, the eighth paragraph of Article L. 421-17, and of Articles L. 421-20, L. 422-1, L. 424-4, L. 424-9, L. 424-10 and L. 426-1, with the following adaptations:

a) In Article L. 421-2, the words: “in Metropolitan France or the overseas *départements*” are replaced by the words: “in France”;

b) In Article L. 421-9, the reference to the Commercial Code is replaced by the reference to the locally applicable provisions having the same object;

c) In Articles L. 421-6 and L. 424-11, the date: “1 November 2007” is replaced by the date: “1 May 2008”.

Article L. 464-2 is also applicable in French Polynesia.

## Section III Trading in financial instruments

### Subsection 1 General provisions

#### Paragraph 1 Transfer of title, and pledging, of securities

Article L. 754-5. – Articles L. 211-17 to L. 211-19 are applicable in French Polynesia.

Article L. 754-6. – Article L. 211-20 is applicable in French Polynesia.

#### Paragraph 2 Clearing and assignment of receivables

Article L. 754-7. – Articles L. 211-36 to L. 211-40 are applicable in French Polynesia. In subparagraph 1 of paragraph I of Article L. 211-36, the words: “with the exception of the individuals and legal entities referred to in subparagraph 2 a)” have been inserted after the words: “the individuals or entities having the benefit of the provisions of Article L. 531-2”. The reference to Book VI of the Commercial Code is replaced by the reference to the provisions applicable in French Polynesia having the same object.

### Subsection 2 Specific ways of selling financial instruments

#### Paragraph 1 Auctions

Article L. 754-8. – Article L. 211-21 is applicable in French Polynesia.

#### Paragraph 1 bis Temporary assignments

Article L. 754-8-1. – Articles L. 211-22 to L. 211-33 are applicable in French Polynesia with the following adaptations:

1 The tax provisions of Articles L. 211-22, L. 211-23 and L. 211-28 are replaced by references to the locally applicable provisions having the same object;

2 In subparagraph 3 of Article L. 211-22, the references to Articles 1892 a 1904 of the Civil Code are replaced by references to the locally applicable provisions having the same object;



3 Article L. 432-10 is supplemented by a paragraph worded as follows:

The lender cannot demand return of the securities borrowed before the agreed expiry date of the loan.

II - The provisions of Articles L. 211-22 to L. 211-26 apply likewise to the transfers with full title of securities, certificates or bills, by way of guarantee, provided for in paragraph I of Article L. 211-38 carried out over the counter in connection with financial futures transactions, the transfers of certificates referred to in subparagraph 4 of Article L. 211-22 and the transfers referred to in Article L. 330-2.

#### Paragraph 2 Futures

Article L. 754-9. – Article L. 211-35 is applicable in French Polynesia.

#### Subsection 3 Transactions specific to the regulated markets

Article L. 754-10. - Chapter III of Part III of Book IV is applicable in French Polynesia, with the following adaptations:

**Article L. 433-3 is adapted as follows:**

**1** In paragraphs I and II, the words: “regulated market of a Member State of the European Union or of another State party to the European Economic Area Agreement” are replaced by the words: “French regulated market”;

**2** In paragraph III, the words: “of a State party to the European Economic Area Agreement” are replaced by the word: “French”.

**For the purposes of Article L. 433-3:**

**I. –** The direct or indirect holding of a fraction of the capital or of the voting rights by an entity is assessed by taking account of:

**1** The number of securities held by said entity which give deferred access to the shares to be issued and the voting rights that will be attached thereto;

**2** The shares already issued that said entity may acquire by virtue of an agreement or a financial instrument referred to in Article L. 211-1, without prejudice to the provisions of subparagraph 4 of paragraph III below. The same shall apply to any voting rights that said entity may acquire in the same way;

**3** The shares already issued to which any agreement or financial instrument referred to in Article L. 211-1 relates, settled exclusively in cash and having for said entity an economic impact similar to the holding of said shares. The same shall apply to the voting rights to which any agreement or financial instrument relates in the same circumstances.

**II. –** The following shares are not taken into account:

**1** Those acquired solely for the purposes of clearing, settling or delivering financial instruments within the framework of the regular short-term settlement cycle described in the General Regulation of the Autorité des Marchés Financiers;

**2** Those held by custody account-keepers in connection with their account-keeping and custodial activities;

**3** Those held in the trading portfolio of an investment service provider, provided that such shares do not represent a percentage of the capital or voting rights of their issuer above a threshold set in the General Regulation of the Autorité des Marchés Financiers and that the voting rights attached to said securities are not exercised or otherwise used to participate in the issuer's management.

**III. –** The following are treated as shares or voting rights held by an entity:

**1** Shares or voting rights held by other parties on behalf of said entity;

**2** Shares or voting rights held by the companies that control said entity;

**3** Shares or voting rights held by a third party with whom said entity is acting in concert;

**4** Shares already issued which said entity, or an entity referred to in subparagraphs 1 to 3, is entitled to acquire on its own initiative, immediately or eventually, by virtue of an agreement or a financial instrument referred to in Article L. 211-1. The same shall apply to any voting rights that said entity may acquire in the same way. The General Regulation of the Autorité des Marchés Financiers specifies the implementing provisions of this subparagraph;

**5** Shares in respect of which said entity is the usufructuary;

**6** Shares or voting rights held by a third party with whom said entity has entered into a temporary assignment agreement relating to said shares or voting rights;

**7** Shares lodged with said entity, provided that it may exercise the voting rights attached to them as it sees fit in the absence of specific instructions from the shareholders;

**8** Voting rights which said entity may freely exercise under a power of attorney in the absence of specific instructions from the shareholders concerned.

**IV. –** The following are not treated as shares or voting rights held by an entity:

**1** Shares held by collective investment undertakings for or closed-ended investment firms managed by a portfolio management company controlled by said entity, as provided for in the General Regulation of the Autorité des Marchés Financiers, barring any exceptions provided for in said Regulation;

**2** Shares held in a portfolio managed by an investment service provider controlled by said entity, in the context of a portfolio management service for third parties as provided for in the General Regulation of the Autorité des Marchés Financiers, barring any exceptions provided for in said regulation;

**3** The financial instruments referred to in subparagraph 4 of paragraph III held in the trading portfolio of an investment service provider, provided that such instruments do not represent a percentage of the capital or voting rights of their issuer above a threshold set in the General Regulation of the Autorité des Marchés Financiers.

In paragraphs I and V of Article L. 433-4, the words: “regulated market of a Member State of the European Union or of another State party to the European Economic Area Agreement” are replaced by the words: “French regulated market”.

## Section 4 Clearing houses

Article L. 754-11. – I. – Part IV of Book IV is applicable in French Polynesia, with the exception of the last two paragraphs of Article L. 440-2 and without prejudice to the adaptations provided for in paragraph II.

Article L. 440-2 is adapted as follows:

1 In subparagraphs 1 and 2, the words: “in a Member State of the European Community or another State party to the European Economic Area Agreement” are replaced by the words: “in France”;

2 In subparagraph 4, the words: “Metropolitan” and “or in the overseas *départements*” are deleted;

3 In subparagraph 5, the words: “which is not a member of the European Community or party to the European Economic Area Agreement” are replaced by the words: “other than France” and the words: “in Metropolitan France or the overseas *départements*” are replaced by the words: “in France”;

4 In the seventh paragraph, the words: “Metropolitan” and “or in the overseas *départements*” are deleted.

Article L. 464-1 is also applicable in French Polynesia.

## Section V Investor protection

### Subsection 1 Reporting obligations relating to accounts

Article L. 754-12. – I. – Articles L. 451-1-1, L. 451-1-2, L. 451-1-4, L. 451-1-6, L. 451-3, L. 465-1 and L. 465-2 are applicable in French Polynesia, without prejudice to the adaptations provided for in paragraph II.

II. – 1 For the purposes of Article L. 451-1-1:

a) The words: “of a State party to the European Economic Area Agreement” are replaced by the word: “French”;

b) The words: “in the European Economic Area or a third-party country” are replaced by the word: “abroad”;

2 For the purposes of Article L. 451-1-2:

a) In paragraph I, in subparagraphs 1 and 3 of paragraph II, in paragraph III and in paragraph IV, the words: “of a State party to the European Economic Area Agreement” are replaced by the word “French”;

b) In subparagraph 3 of paragraph II, the words: “of the European Economic Area” are replaced by the words: “of France”.

3 For the purposes of Articles L. 451-3 and L. 465-1, the references to the Commercial Code are replaced by the references to the locally applicable provisions having the same object.

### Subsection 2 Reporting obligations relating to equity interests

Article L. 754-13. – Articles L. 465-4 and L. 466-1 are applicable in French Polynesia.

## Chapter V Service providers

Article L. 755-1. – Article L. 500-1, as well as Articles L. 570-1 and L. 570-2, are applicable in French Polynesia.

## Section I Banking sector institutions

Article L. 755-1-1. – Chapter I of Part I of Book V is applicable in French Polynesia, with the exception of Articles L. 511-12, L. 511-21 to L. 511-28 and subparagraphs 1, 3 and 4 of Article L. 511-34. Articles L. 571-1 to L. 571-9 are also applicable in French Polynesia.

**In the credit institutions referred to in Article L. 511-1, a specialised commission shall be created under the responsibility of the deliberative body to deal with matters pertaining to the preparation and verification of the accounting and financial information. The composition of said commission shall be determined by the deliberative body. The commission members must be members of the deliberative body who perform executive functions in the company. At least one commission member must have specific competence in financial or accounting matters and also be independent in regard to certain criteria specified and made public by the deliberative body.**

**Without prejudice to the deliberative body's remit, said commission is responsible, inter alia, for monitoring:**

**1 The preparation of financial information;**

**2 The effectiveness of the internal auditing and risk management systems;**

**3 The statutory audit of the annual accounts and, where applicable, of the consolidated accounts, by the statutory auditors;**

**4 The independence of the statutory auditors.**

**It issues a recommendation on the statutory auditors proposed for appointment by the General Meeting or by the body performing a similar function.**

**It reports to the deliberative executive body regularly on the performance of its duties and informs it immediately of any problem encountered.**

**Said commission also monitors the risk management policy, procedures and systems.**

**On a decision of the deliberative body, however, said task may be entrusted to a different committee governed by the provisions of the second and ninth paragraphs.**

**For the purposes of Article L. 511-35, the references to the Commercial Code are replaced by the references to the locally applicable provisions having the same object.**

**In Article L. 511-36, the words: “regulation of the European Commission” are replaced by the words: “order of the Minister for the Economy”.**

The second paragraph of Article L. 571-4 is applicable to the Office des Postes et Télécommunications.

### Subsection 1 Financial holding companies

#### Paragraph 1 Common provisions

Article L. 755-2. – Article L. 515-1 is applicable in French Polynesia.

#### Paragraph 2 Plant and real-estate leasing companies

Article L. 755-3. – Articles L. 515-2 and L. 515-3 and Article L. 571-13 are applicable in French Polynesia.

#### Paragraph 3 Mutual guarantee societies

Article L. 755-4. – Articles L. 515-4 to L. 515-12 are applicable in French Polynesia.

#### Paragraph 4 Real-estate credit companies

**Article L. 755-4-1. – I. – Articles L. 515-13 to L. 515-33 are applicable in French Polynesia.**

**II. – For the purposes of Articles L. 515-14, L. 515-25, L. 515-27, L. 515-28, L. 515-30 and L. 515-31, the references to the Commercial Code are replaced by references to locally applicable provisions having the same object.**

#### Paragraph 5 Housing loan companies

**Article L. 755-4-2. – Articles L. 515-34 to L. 515-39 are applicable in French Polynesia.**

### Subsection 2 Specialised financial institutions

Article L. 755-5. – Articles L. 516-1 and L. 516-2 are applicable in French Polynesia.

### Subsection 3 Financial holding companies

Article L. 755-6. – Articles L. 517-1 and L. 571-14 are applicable in French Polynesia.

### Subsection 4 Banking transaction intermediaries

Article L. 755-7. – Articles L. 519-1 to L. 519-6 and Articles L. 571-15 and L. 571-16 are applicable in French Polynesia.

### Section 1 bis Financial units of the Office des Postes et Télécommunications

Article L. 755-7-1. – The Office des Postes et Télécommunications may offer, for its own account or on behalf of other service providers and pursuant to the competition rules and the specific rules applicable to each of its fields of activity, services relating to the provision of means of payment and funds transfer facilities including, inter alia, postal cheques, payment cards, postal orders and cash-on-delivery facilities.

The *Livret A* account is marketed by the Office des Postes et Télécommunications as provided for in Articles L. 221-2 to L. 221-4, L. 221-6 to L. 221-9 and L. 221-38. All the monies paid into said accounts are managed centrally by the Caisse des Dépôts et Consignations in the fund referred to in Article L. 221-7. The Office receives commission under the terms of the decree referred to in the first paragraph of Article L. 221-6.

It may receive home-ownership savings scheme deposits on behalf of credit institutions approved pursuant to Article L. 511-10 and distribute residential mortgages as provided for in Articles L. 315-1 to L. 315-3 of the Building and Housing Code. It may also distribute other savings products on behalf of credit institutions approved pursuant to Article L. 511-10 or of investment firms approved pursuant to Article L. 532-1.

Article L. 755-7-2. – As an exception to Articles L. 755-1-1 and L. 755-10, the provisions of chapters I to VII of Part I of Book V and those of Chapter II of Part III of that same Book are not applicable to the financial units of the Office des Postes et Télécommunications.

The orders of the Minister for the Economy issued pursuant to Articles L. 611-1, L. 611-3 and L. 611-4 and the rules of the Comité de la Réglementation Bancaire et Financière and those of the Autorité des Normes Comptables may, subject to amendment as necessary, be extended to the financial units of the Office des Postes et Télécommunications as determined in a decree issued following consultation with the Conseil d'Etat.

The financial units of the Office des Postes et Télécommunications are subject to the scrutiny of the General Inspectorate of Finance .

Part VI of Book V relating to the prevention of money laundering, with the exception of Article L. 563-2, and Chapter IV of Part VII of said book apply to the Office des Postes et Télécommunications. In the event of the Office failing to meet its obligations in this regard, the General Inspectorate of Finance may refer the matter to the Autorité de Contrôle Prudentiel seeking the imposition of a penalty referred to in Article L. 612-39.

#### Subsection 1 Postal cheques and payment cards

Article L. 755-7-3. The postal cheque service is administered by the Office des Postes et Télécommunications.

Subject to approval from the Office des Postes et Télécommunications, any person may open a postal current account.

Article L. 755-7-4. - Articles L. 131-1 to L. 131-15, L. 131-31 to L. 131-38, first paragraph, L. 131-39 to L. 131-46, L. 131-56 and L. 131-57, L. 131-59 and L. 131-60, L. 131-69 to L. 131-87, with the exception of the second sentence of the third paragraph of Article L. 131-71, L. 163-1 to L. 163-12 and

L. 712-5 are applicable to postal cheques drawn on the Office des Postes et Télécommunications.

Postal cheques are not endorsable.

In the event of payment of a postal cheque being refused, a certificate of non-payment shall be issued instead of a protest.

Article L. 755-7-5. – The holder of a postal current account shall be responsible for the consequences resulting from any improper use, loss or disappearance of the cheque forms issued to him by the Office des Postes et Télécommunications. Liability for any erroneous payment or transfer resulting from inaccurate or incomplete indications shall rest with the drawer of the cheque or the person requesting the transfer.

Article L. 755-7-6. – The balance on any postal current account on which there have been no movements or claims from the rightful owners for thirty years shall be acquired by New Caledonia.

Article L. 755-7-7. – The Office des Postes et Télécommunications is responsible for the sums it receives for the credit of postal current accounts.

Where in-payment postal orders are used, the provisions of Article L. 755-7-10 are applicable.

Article L. 755-8. – The Office des Postes et Télécommunications grants its guarantee to the recipients of payments made via the payment cards it issues.

#### Subsection 2 Postal orders

Article L. 755-7-9. – Funds may be transmitted by means of postal orders issued by the Office des Postes et Télécommunications.

Article L. 755-7-10. – The Office des Postes et Télécommunications is liable for the sums converted into postal orders until such time as they are paid.

Article L. 755-7-11. – Funds received by the Office des Postes et Télécommunications for transmission via an order of any kind shall be definitively acquired by French Polynesia if payment or reimbursement thereof is not requested within two years of the date on which they were paid in.

#### Subsection 3 Cash-on-delivery facilities

Article L. 755-7-12. – Items of mail may be sent on a cash-on-delivery basis under terms and conditions laid down by the Office des Postes et Télécommunications.

Article L. 755-7-13. – The obligations imposed on the bearer of a cheque by the laws and regulations cannot be raised against the Office des Postes et Télécommunications in connection with the payment of cheques received by it pursuant to this subsection.

Article L. 755-7-14. – The Office des Postes et Télécommunications is responsible for the sums which have, or should have, been collected as soon as the items are delivered to the debtor or to the addressee. Where said sums have been converted into postal orders or credited to a postal current account, the Office's responsibility is the same as it is for postal orders or postal cheques.

Article L. 755-7-15. – Claims relating to cash-on-delivery items shall be entertained for a period of two years with effect from posting.

## Section 2 Payment service providers and money changers

### Subsection 1 Payment service providers

Article L. 755-8. – Chapter I of Part II of Book V is applicable in French Polynesia. The Office des Postes et Télécommunications of French Polynesia is deemed to be a payment service provider but is not subject to the provisions of Chapter II of Book V where it provides payment services that are within the scope of the legal provisions that govern it.

Articles L. 572-5 to L. 572-12 also apply there.

### Subsection 2 Payment institutions

Article L. 755-8-1. – Chapter II of Part II of Book V, with the exception of Articles L. 522-12 and L. 522-13, is applicable in French Polynesia.

### Subsection 3 Agents

Article L. 755-8-2. – Chapter III of Part II of Book V, with the exception of Article L. 523-4, is applicable in French Polynesia.

### Subsection 4 Money changers

Article L. 755-8-3. – Articles L. 524-1 to L. 524-7 and Articles L. 572-1 to L. 572-4 are applicable in French Polynesia.

## Section III Investment service providers

### Subsection 1 Definitions

Article L. 755-9. – Chapter I of Part III of Book V is applicable in French Polynesia with the following adaptations:

a) In Article L. 531-2, the words: “and without being entitled to claim the benefit of the provisions of Articles L. 532-16 to L. 532-27” are deleted; in subparagraph 2 d) of said article, the references to the Commercial Code are replaced by references to the locally applicable provisions having the same object;

b) In Article L. 531-10, the words: “or an entity referred to in Article L. 532-18 or Article L. 532-18-1” are deleted.

*Replaced by Order No. 2007-1490 of 18 October 2007 Art. 9 Official Journal of 19 October 2007 and rectification, Official Journal of 27 October 2007*



## Subsection 2 Conditions of admission to the profession

Article L. 755-10. – Chapter II of Part III of Book V, with the exception of Articles L. 532-16 to L. 532-27, is applicable in French Polynesia with the following adaptations.

a) In the last paragraph of Article L. 532-1, the words: “have either been authorised in another Member State of the European Community or which do not come under the law of one of those States” are replaced by the words: “have been approved in a State other than France”;

In Article L. 532-5, the words: “and have the benefit of the provisions of Articles L. and L. 532-23 to L. 532-25” are deleted.

c) For the purposes of Article L. 532-6, the references to the Commercial Code and the Civil Code are replaced by references to the locally applicable provisions having the same object.

## Subsection 3 Obligations of investment service providers

Article L. 755-11. – Chapter III of Part III of Book V is applicable in French Polynesia.

Articles L. 573-1 to L. 573-7 also apply there.

Article L. 755-11-1. - Articles L. 541-1 to L. 541-7 and **Articles L. 541-8-1 and L. 541-9**, as well as Articles L. 573-9 to L. 573-11, are applicable in French Polynesia.

Article L. 755-11-2. – Article L. 542-1 is applicable in French Polynesia.

Art. L. 755-11-2-1. – Article L. 543-1 is applicable in French Polynesia, with deletion of the words: “the management companies of the forestry investment companies”.

Article L. 755-11-3. – Articles L. 544-1 **to L. 544-6** are applicable in French Polynesia.

**For the purposes of these provisions:**

In the first paragraph of Article L. 544-4, the words: “within the meaning of Article 22 of Regulation No. 1006/2009 of the European Parliament and of the Council of 16 September 2009 on the credit rating agencies” are deleted.

“The term “Credit rating agency” shall mean any legal entity whose activities include the issuing of credit ratings on a professional basis, the term “credit rating” shall mean any opinion issued through the application of a well-defined and well-established classification system that uses various rating categories indicative of the credit status of an entity, a debt, a financial obligation, a debt security, preference shares or other financial instruments, or of an issuer of such a debt, financial obligation or debt security, or of such preference shares or such a financial instrument, and the term “credit rating service” shall mean the activities of analysing data and information and evaluating, approving, issuing and re-examining credit ratings.

Article L. 755-11-4. – Articles L. 545-1 to L. 545-7 are applicable in French Polynesia with the following adaptations:

a) In Article L. 545-1, the words: “within the meaning of subparagraph 25 of paragraph 1 of Article 4 of Directive 2004/34/EC of 21 April 2004” are deleted;

b) In Article L. 545-5, the words: “in Metropolitan France or in the overseas *départements*” are replaced by the words: “in France”;

c) For the purposes of Articles L. 545-1 to L. 545-7, the term “bound agent” shall mean any individual or legal entity who/which, under the entire and unconditional responsibility of a sole and unique investment service provider on behalf of which he/it acts, promotes investment services to clients, inter alia potential clients, receives and forwards the clients' instructions or orders relating to financial instruments or investment services, places financial instruments, or provides clients, inter alia potential clients, with advice on said instruments or services.

**Article L. 755-11-5. – Articles L. 546-1 to L. 546-4 are applicable in French Polynesia. For the purposes of these provisions, in Article L. 546-1, the words: “the sole register referred to in Article L. 512-1 of the Insurance Code” are replaced by the words: “the register referred to in Article 1 of Act No. 2005-1564 of 15 December 2005 introducing various provisions to bring French law into line with Community law in the field of insurance”.**

## Section 5 Miscellaneous property intermediaries

Article L. 755-12. – Part V of Book V is applicable in French Polynesia.

Article L. 573-8 also applies there.

## Section 6 Obligations relating to the prevention of money laundering

Article L. 755-13. – I. – For the application in French Polynesia of the provisions of Part VI of Book V relating to the prevention of money laundering and terrorist financing:

**1 In Articles L. 561-2 and L. 561-20, the references to the Insurance Code, the Mutuality Code and the Social Security Code are replaced by references to locally applicable provisions having the same object;**

2 In subparagraph 8 of Article L. 561-2, the references in Article 1 of Act No. 70-9 of 2 January 1970 regulating the conditions of practise of the activities pertaining to certain transactions in real-estate and goodwill, excluding exchanges, letting or sub-letting, seasonal or otherwise, whether unfurnished or furnished, are replaced by references to locally applicable provisions having the same object;

In subparagraph 12 of Article L. 561-2, the reference to Order No. 45-2138 of 19 September 1945 instituting the Order of Accountants and regulating the title and the profession of Accountant is replaced by references to locally applicable provisions having the same object and “the statutory auditors” shall designate the equivalent functions regulated in accordance with the locally applicable provisions;

4 In subparagraph 13 of Article L. 561-2, the court-appointed administrators, the court-appointed receivers, and the court-appointed auctioneers and valuers shall designate the equivalent functions regulated in accordance with the locally applicable provisions;

5 In Article L. 561-14-2, the references to Article 537 of the Code Général des Impôts and to Articles L. 83, L. 85, L. 87 and L. 89 of the Livre des Procédures Fiscales are replaced by references to the locally applicable provisions having the same object;

6 For the purposes of the provisions of paragraph II of Article L. 561-15, either the offence referred to in the provisions of Article 1741 of the Code Général des Impôts committed by the individuals or entities to whom/which said provisions apply, or, for the individuals or entities subject to the locally established tax regulations, the fact of having fraudulently evaded or of having attempted to fraudulently evade the calculation or the partial or total payment of the taxes referred to therein, shall be deemed to constitute tax fraud;

7 For the purposes of the provisions of the last subparagraph of paragraph II of Article L. 561-23, the offence described in Article 1741 shall constitute the offence of tax fraud within the meaning of the provisions of subparagraph 6 of paragraph I of this article;

8 For the purposes of the third and fourth subparagraphs of paragraph II of Article L. 561-29, the offence described in Article 1741 of the Code Général des Impôts shall constitute the offence of tax fraud within the meaning of the provisions of subparagraph 6 of paragraph I of this article. Where the unit referred to in Article L. 561-23 has received information concerning acts of fraudulent evasion or of tentative fraudulent evasion of the calculation or of the partial or total payment of the taxes due under the locally established tax regulations, it may send it to the tax authority of French Polynesia. It may also send the tax authority of the territorial community information concerning any laundering of tax fraud proceeds in violation of the local regulations. In this case, the tax authority of the territorial community shall forward it to the Public Prosecutor after obtaining the approval of the Commission des Offences Fiscales referred to in Article 1741 A of the Code Général des Impôts. Said commission shall rule on the reasonably perceivable substance of the suspicions of tax fraud reported to the unit referred to in Article L. 561-23 of this code;

10 In subparagraphs 5, 6 and 7 of Article L. 561-36, the references made to the Chambers of notaries and to Order No. 45-2590 of 2 November 1945 relating to the status of the notarial profession, to the local Chambers of the bailiffs and to Order No. 45-2592 of 2 November 1945 relating to the status of the bailiffs, to the disciplinary Chamber of the court-appointed auctioneers and valuers and to Part II of Book VIII of the Commercial Code are replaced by the references to the authorities having supervisory and sanctioning powers over said professions under the locally applicable regulations and locally applicable provisions having the same object;

11 In subparagraphs 9, 10 and 11 of Article L. 561-36, the references made respectively to Part I of Book VIII of the Commercial Code, to Part II of the same book and the same code and to Order No. 45-2138 of 19 September 1945 instituting the Order of Accountants and regulating the title and the profession of Accountant are replaced by references to the locally applicable provisions having the same object;

12 The authorities responsible for monitoring compliance with the obligations laid down in Chapter I of Part V by the entities referred to in subparagraphs 5, 6, 7, 9, 11 and 12 of paragraph I of Article L. 561-36 request sight of the documents pertaining to compliance with said obligations as provided for in a decree issued following consultation with the Conseil d'Etat;

13 In paragraph II of Article L. 561-36, the words: “, the bodies referred to in Article L. 134-1 of the Tax Courts Code” are deleted.

II. – Article L. 562-2 of the Monetary and Financial Code is applicable in French Polynesia.

## **Chapter VI Banking and Financial Authorities**

### **Section I Authorities common to credit institutions and investment firms**

#### **Subsection 1 Regulations**

Article L. 756-1. – Chapter I of Part I of Book VI is applicable in French Polynesia.

#### **Subsection 2 The Autorité de Contrôle Prudentiel**

Article L. 756-2. – I. – As provided for in paragraphs II and III, Chapter II of Part I of Book VI is applicable in French Polynesia, with the exception of 3 of Article L. 612-1 and of Articles L. 612-22 and L. 612-29.

II. – 1 The Autorité de Contrôle Prudentiel supervises the entities enumerated in subparagraph B of paragraph I of Article L. 612-2 and in subparagraphs 1 and 2 of paragraph II of that same article solely with regard to compliance with the provisions of Part VI of Book V;

2 In the event of an entity referred to in subparagraph B of paragraph I of Article L. 612-2 failing to comply with the provisions of Part VI of Book V, the Enforcement Commission of the Autorité de Contrôle Prudentiel may impose on it one or more disciplinary sanctions as provided for in Articles L. 612-38 and L. 612-39;

3 In the event of an entity referred to subparagraphs 1 and 2 of paragraph II of Article L. 612-2 failing to comply with the provisions of Part VI of Book V, the Enforcement Commission of the Autorité de Contrôle Prudentiel may impose one or more disciplinary sanctions on it or, where appropriate, on its senior managers or partners, or third parties, having management or administrative powers, as provided for in Article L. 612-38 and in paragraph I of Article L. 612-41;

The provisions of Articles L. 612-16, L. 612-28 and L. 612-42 shall apply to the breaches giving rise to the imposition of sanctions pursuant to subparagraphs 2 and 3;

5 Article L. 612-20 shall not apply to the entities referred to in subparagraph B of paragraph I of Article L. 612-2 and in subparagraphs 1 and 2 of paragraph II of said article. Said entities are required to make a contribution towards the cost of supervising the obligations laid down in Part VI of Book V. Said contribution shall be paid to the Banque de France. The amount thereof is determined by order of the Ministers for the Economy, for the Mutual Societies and for Social Security.

III. – 1 In Articles L. 612-1, L. 612-2, L. 612-3 and L. 612-33, the references to the Insurance Code, the Social Security Code and the Mutuality Code are replaced by references to locally applicable provisions having the same object;

2 The references to the Commercial Code in Articles L. 612-14, L. 612-26 and L. 612-45 are replaced by references to locally applicable provisions having the same object;

3 In Article L. 612-39, the words: “and the additional requirements referred to in the second paragraph of Article L. 334-1 of the Insurance Code” are deleted.

Article L. 641-1 is also applicable in French Polynesia.

## Subsection 6 Other institutions

Article L. 756-2-1. – The Autorité de Contrôle Prudentiel may define the terms under which it shall lend its support to the government of French Polynesia through an agreement which provides for an allocation of resources by said government.

Article L. 756-4-2. – Articles L. 615-1 and L. 615-2 are applicable in French Polynesia.

## Subsection 3 Provisions specific to credit institutions, investment firms et payment institutions

Article L. 756-3. – Chapter III of Part I of Book VI is applicable in French Polynesia with the exception of Articles 613-31-1 to L. 613-31-10 and L. 613-33.

Article L. 641-2 also applies there.

## Subsection 4 The Comité Consultatif du Secteur Financier and The Comité Consultatif de la Législation et de la Réglementation Financières

Article L. 756-4. – Articles L. 614-1 to L. 614-3 are applicable in French Polynesia with the following adaptations:

- in the first paragraph of Article L. 614-1, the words: “and insurance companies” are deleted;

- in the first paragraph of Article L. 614-2, the words: “and any proposed Community regulation or directive, before it is examined by the Council of the European Communities,” and the words: “in the insurance sector,” are deleted.

## Subsection 5 The Comité Consultatif du Crédit auprès du Conseil des Ministres of French Polynesia (Consultative Commission on Credit of the Council of Ministers of French Polynesia)

Article L. 756-4-1. – The composition of the Comité Consultatif auprès du Conseil des Ministres of French Polynesia is determined in Article 101 of Constitutional No. 2004-192 of 27 February 2004 granting autonomous status to French Polynesia, reproduced hereunder:

Art. 101. – A consultative commission on credit, reporting to the Council of Ministers, has been created.

Said commission is composed, in equal measure, of:

1 Representatives of the State;

2 Representatives of the Government of French Polynesia;

3 Representatives of the banks and other financial institutions conducting business in French Polynesia;

4 Representatives of the relevant professional bodies and trade unions.

A decree determines the commission's organisational and functional rules.

## Section 2 The Autorité des Marchés Financiers

Article L. 756-5. – I. – Articles L. 621-1 to L. 621-7-2, paragraphs I, II, III, IV, VII, VIII and IX of Article L. 621-8, Articles L. 621-8-1, L. 621-8-2, L. 621-9, with the exception of its last paragraph, L. 621-9-1 to L. 621-20-1, L. 621-22 to L. 621-35 as well as Articles L. 642-1 and L. 642-3 are applicable in French Polynesia, without prejudice to the adaptations provided for in paragraph II.

II. – 1 For the purposes of paragraph I of Article L. 621-8:

a) In paragraph I, the words: “or any equivalent document required under the legislation of another State party to the European Economic Area Agreement” are deleted;

b) Paragraph III is worded as follows:

III. – The draft document referred to in paragraph I is also subject to the prior approval of the Autorité des Marchés Financiers in the cases specified in its General Regulation for any transaction carried out in France where the registered office of the issuer of the securities which are the subject of the transaction is outside the European Economic Area and where the transaction involves financial instruments whose initial public offer or assignment or first admission to a regulated market took place in France;

**2 In subparagraph d) of paragraph II of Article L. 621-15, the words: “of another Member State of the European Union or a State party to the European Economic Area Agreement” are replaced by the word: “French”. (1)**

2 For the purposes of paragraph IV of Article L. 621-22, the references to the Commercial Code are replaced by the references to the locally applicable provisions having the same object.

3 For the purposes of Article L. 621-32, the words: “pursuant to Directive 2003/125/EC of the Commission of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the fair presentation of investment recommendations” are deleted.

(Articles L. 756-6 and L. 756-7 were repealed by Order No.2004-823 of 19 August 2004 Art. 1 II 1 Official Journal of the French Republic 21 August 2004.)

(Articles L. 746-6 and L. 746-7 were repealed by Order No. 2004-823 of 19 August 2004 Art. 1 II 1 Official Journal of the French Republic 21 August 2004.)

**NB: (1) ACT No. 2010-1249 of 22 October 2010 Art. 85 III 15: this act supplements Article L. 746-5 by adding a second subparagraph 2 to the pre-existing subparagraph 2.**

Article L. 756-8. – I. – Articles L. 631-1, L. 631-2, **L. 631-2-1, L. 631-2-2** L. 632-3, L. 632-7 and L. 632-13 to L. 632-17 are applicable in French Polynesia, without prejudice to the adaptations provided for in paragraph II.

II. – 1 In paragraphs I and II of Article L. 632-7 and in Article L. 632-13, the words: “which is not a Member State of the European Community and not party to the European Economic Area Agreement,” are replaced by the words: “other than France”;

2 In paragraph III of Article L. 632-7, the words: “of another Member State of the European Community or another State party to the European Economic Area Agreement or a third-party country” are replaced by the words: “other than France”;

3 In Article L. 632-14:

a) In the first and fourth paragraphs, the words: “of Articles L. 632-12 and L. 632-13”, are replaced by the words: “of Article L. 632-13”;

b) In the second paragraph, the words: “Articles L. 632-12 and L. 632-13” are replaced by the words: “Article L. 632-13”;

4 In Article L. 632-15:

a) The words: “Articles L. 632-12 and L. 632-13” are replaced by the words: “Article L. 632-13”;

b) The words: “and not party to the European Economic Area Agreement” are replaced by the words: “other than France”;

5 In Article L. 632-16:

a) In the first and second paragraphs, the words: “which is not a Member State of the European Community and not party to the European Economic Area Agreement” are replaced by the words: “other than France”;

b) In the third paragraph, the words: “of Article L. 632-5 and of paragraph III of Article L. 632-7” are replaced by the words: “of paragraph III of Article L. 632-7”;

c) A paragraph has been added, worded as follows:

The Autorité des Marchés Financiers and the Autorité de Contrôle Prudentiel may refuse to accede to requests from the authorities of States other than France relating to the activities referred to in the first paragraph only where the nature thereof is likely to undermine French sovereignty, security or public order, or where criminal proceedings have already been instituted in France on the basis of the same facts and against the same entities, or where said entities have already been sanctioned for the same facts by a final decision.

## PART VI PROVISIONS APPLICABLE IN THE WALLIS AND FUTUNA ISLANDS

### Chapter I The Currency

#### Section 1 Bank money instruments

Article L. 761-1. – Articles L. 112-6, L. 112-7, L. 112-11 and L. 112-12 are applicable in the Wallis and Futuna Islands.

Article L. 761-1-1. – I. – Articles L. 131-1 to L. 131-87, with the exception of the second sentence of the third paragraph of Article L. 131-71, as well as Chapter III of Part III, with the exception of the second subparagraph of paragraph II of Article L. 133-1, of Article L. 133-12 and of the second subparagraph of paragraph I of Article L. 133-13, are applicable in the Wallis and Futuna Islands as provided for in paragraph II.

For the purposes of the provisions of Article L. 131-1-1, the words: “in euros” are replaced by the words: “in CFP francs.”

II. –a) For the purposes of the provisions of Article L. 131-1-1, the words: “in euros” are replaced by the words: “in CFP francs”.

b) If one of the payment service providers is located in the Wallis and Futuna Islands and the other in Metropolitan France, in the overseas *départements*, Saint Barthélemy, Saint Martin, Mayotte or Saint Pierre and Miquelon, for the purposes of paragraph I of Article L. 133-13, the words: “at the close of the first business day” are replaced by the words: “at the close of the fourth business day”;

c) In the first subparagraph of paragraph II of Article L. 133-1, the words: “or in Saint Pierre and Miquelon and the transaction is carried out in euros” are replaced by the words: “in Saint Pierre and Miquelon, New Caledonia, French Polynesia or the Wallis and Futuna Islands and the transaction is carried out in euros or in CFP francs”;

d) In paragraph I of Article L. 133-1-1, the words: “or in Mayotte” are replaced by the words: “in Mayotte, in New Caledonia, in French Polynesia or the Wallis and Futuna Islands”;

e) In the fourth paragraph of Article L. 133-14, the words: “in the overseas *départements*, Saint Martin, Saint Barthélemy, Mayotte or Saint Pierre and Miquelon” are replaced by the words: “in the overseas *départements*, Saint Martin, Saint Barthélemy, Mayotte, Saint Pierre and Miquelon, New Caledonia, French Polynesia or the Wallis and Futuna Islands”;

f) In paragraph II of Article L. 133-22, the words: “in paragraph I of Article L. 133-13” are replaced by the words: “in paragraph I of Article L. 133-13”.

A decree issued following consultation with the Conseil d'Etat determines the implementing provisions of this article.



## Section II Financial dealings with foreign countries

### Subsection 1 General provisions

Article L. 761-2. – Articles L. 151-1 to L. 151-4, as well as Article L. 165-1, are applicable in the Wallis and Futuna Islands.

Article L. 165-1 is adapted as follows:

“Article L. 165-1. - The articles of the Customs Code in force in the Wallis and Futuna Islands that correspond to Parts II and XII of the Metropolitan Customs Code are applicable to breaches of the obligations set forth in Article L. 152-1.”

Decrees issued on the basis of the report from the Minister for Overseas France and from the Minister for the Economy determine the implementing provisions of Article L. 151-2.

### Subsection 2 Reporting obligations

Article L. 761-3. - In the Wallis and Futuna Islands, individuals must declare the sums, securities or assets that they transfer abroad or from abroad without recourse to the services of an institution subject to the provisions of Part I of Book V or of Chapters I to III of Part II of Book V.

A declaration shall be made for each transfer, excluding transfers of an amount below 1,193,317 CFP francs.

A decree issued following consultation with the Conseil d'Etat determines the implementing provisions of this article.

### Subsection 3 Detection and prosecution of offences

Article L. 761-4. - I. — Failure to discharge the obligations set forth in Article L. 761-3 shall incur a fine equal to one quarter of the sum to which the offence or attempted offence relates.

II - In the event of customs officers discovering an offence referred to in paragraph I, they shall confiscate the entire sum to which the offence or attempted offence relates for a period of six months. Said period may be renewed with the consent of the Public Prosecutor of the place where the customs authority handling the case is located but shall not exceed a total period of twelvemonths.

The sum confiscated shall be attached, and forfeiture thereof may be pronounced by the competent court if, during the period of confiscation, it is established that the perpetrator of the offence referred to in paragraph I is or was in possession of objects giving grounds for believing that he is or was also the perpetrator of one or more offences envisaged in and rendered illegal by the Customs Code applicable in the Wallis and Futuna Islands, or that he is participating or has participated in the commission of such offences or, if there are plausible reasons for believing that the perpetrator of the offence referred to in paragraph I has also committed one or more offences envisaged in and rendered illegal by the

Customs Code applicable in the Wallis and Futuna Islands or that he has participated in the commission of such offences.

Dismissal of the charges, or acquittal and discharge, shall entail the lifting of the confiscation and attachment measures imposed, as of right, with the Trésor Public meeting the cost thereof. The same shall apply in the event of the cessation of an action seeking the application of tax penalties.

III. - Detection, recording and prosecution of the offences referred to in paragraph I shall take place as determined in the Customs Code applicable in the Wallis and Futuna Islands.

Article L. 761-5. –The provisions set forth in Articles L. 761-3 and L. 761-4 do not apply to financial dealings between the Wallis and Futuna Islands, on the one hand, and Metropolitan France, Guadeloupe, French Guiana, Martinique, Réunion, Saint Barthélemy, Saint Martin, Mayotte, Saint Pierre and Miquelon, New Caledonia and French Polynesia, on the other.

## Chapter II Products

### Section I Financial Instruments

#### Subsection 1 Definition and general rules

Article L. 762-1. - I. – Articles L. 211-1 to L. 211-22 and L. 211-24 to L. 211-41 are applicable in the Wallis and Futuna Islands, without prejudice to the adaptations provided for in paragraph II.

II. – 1 The tax references of Articles L. 211-22 and L. 211-28 are replaced by references to the locally applicable provisions having the same object;

#### Subsection 2 Shares

Article L. 762-2. – Articles L. 212-1 A, L. 212-1, 212-2, and L. 212-4 to L. 212-7 are applicable in the Wallis and Futuna Islands.

#### Subsection 3 Debt securities

##### Paragraph 1 Negotiable debt securities

Article L. 762-3. – Articles L. 213-1 A and L. 213-1 to L. 213-4-1 are applicable in the Wallis and Futuna Islands, with the exception of subparagraph 5 of Article L. 213-3.

##### Paragraph 2 Bonds

Article L. 762-4. – Articles L. 213-5 and L. 213-6, as well as Article L. 231-1, are applicable in the Wallis and Futuna Islands.

Article L. 762-5. – Article L. 213-7 is applicable in the Wallis and Futuna Islands.

## Subsection 4 Collective investment products

Article L. 762-6. – Chapter IV of Part I of Book II is applicable in the Wallis and Futuna Islands, with the exception of subparagraph 4 of paragraph I of Article L. 214-1, subparagraph 4 of paragraph II of Article L. 214-34, Articles L. 214-39 to L. 214-41-1, (1), and Articles L. 214-85 to L. 214-88, without prejudice to the following adaptation:

In Article L. 214-18, the words: “the provisions of Order No. 45-2710 of 2 November 1945 relating to investment firms, and” are deleted.

Articles L. 231-3 to L. 231-21 are also applicable in the Wallis and Futuna Islands.

**NB: (1) Section 5 has not been supplemented**

## Section 2 Savings products

Article L. 762-6-1. – Articles L. 221-1, L. 221-3 to L. 221-9 and L. 221-38 are applicable in the Wallis and Futuna Islands, with the following adaptations:

1 In Article L. 221-3:

a) In the first paragraph, the words: “, to the associations referred to in paragraph 5 of Article 206 of the Code Général des Impôts and to low-income housing associations” are deleted;

b) In the third paragraph, the words: “or one special account with the Crédit Mutuel opened before 1 January 2009” are deleted;

2 In Article L. 221-5:

a) In the first paragraph, the words: “and *Livret de Développement Durable* savings accounts governed by Article L. 221-27” are deleted and the words: “one account or the other” are replaced by the words: “said account”;

b) In the second paragraph, the words: “and *Livret de Développement Durable* savings accounts” are deleted and the words: “said accounts” are replaced by the words: “said account”;

c) In the fourth, fifth and sixth paragraphs, the words: “or the *Livret de Développement Durable* savings account” are deleted;

d) In the fifth paragraph, the words: “those two accounts” are replaced by the words: “said account”;

3 In Article L. 221-6:

a) In the first paragraph, the words: “and those marketing the *Livret de Développement Durable*” are deleted;

b) The second paragraph is deleted;

c) The third paragraph is replaced by the following provisions:

“The compensation referred to in the previous paragraph shall be borne by the fund stipulated in Article L. 221-7.”;

4 In Article L. 221-8, the words: “as well as to special Crédit Mutuel savings accounts opened before 1 January 2009” are deleted.

Art. L. 762-6-2. - I. — Articles L. 221-35 and L. 221-37 are applicable in the Wallis and Futuna Islands, without prejudice to the adaptations provided for in paragraph II.

II. — 1 Article L. 221-35 is supplemented by the following sentence: “Said provisions are applicable to the Trésor Public.”;

2 Article L. 221-37 is replaced by the following provisions:

“Article L. 221-37. - With regard to the credit institutions, specially designated officials of the Institut d’Émission d’Outre-Mer are authorised, in the performance of their duties, to seek to uncover violations of the provisions of Article L. 221-35 and to record them in a statement of offence.”

Article L. 762-7. – Articles L. 223-1 to L. 223-4, as well as Articles L. 232-1 and L. 232-2, are applicable in the Wallis and Futuna Islands.

## Chapter III Services

### Section 1 Banking transactions

#### Subsection 1 General provisions

Article L. 763-1. – Articles L. 311-1 to L. 311-4 are applicable in the Wallis and Futuna Islands.

#### Subsection 2 Accounts and deposits

Article L. 763-2. – Chapter II of Part I of Book III is applicable in the Wallis and Futuna Islands, with the exception of articles L. 312-17 and 312-18. Article L. 352-1 also applies there.

Article L. 312-1 is adapted as follows:

1 Second paragraph:

a) In the second sentence, the words: “the Banque de France to enable it” are replaced by the words: “the Institut d’Émission d’Outre-Mer to enable it”;

b) In the third and fourth sentences, the words: “the Banque de France”, are replaced by the words: “the Institut d’Émission d’Outre-Mer”;

2 In the sixth and seventh paragraphs, all occurrences of the words: “the Banque de France” are replaced by the words: “the Institut d’Émission d’Outre-Mer”.

#### Subsection 3 Loans

##### Paragraph 1 General provisions

Article L. 763-3. – Articles L. 313-1 to L. 313-5-2 are applicable in the Wallis and Futuna Islands. Article L. 351-1 also applies there.

##### Paragraph 2 Categories of loans

#### Subparagraph 1 Leasing

Article L. 763-4. – Articles L. 313-7 to L. 313-11 are applicable in the Wallis and Futuna Islands.

#### Subparagraph 2 Business loans

Article L. 763-5. – Articles L. 313-12, L. 313-12-1, L. 313-12-2, L. 313-21, L. 313-22, L. 313-22-1 and L. 313-29-1 are applicable in the Wallis and Futuna Islands.

For the purposes of the provisions of Article L. 313-12-2, the words: “The Banque de France” are replaced by the words: “The Institut d’Émission d’Outre-Mer”.

#### Paragraph 3 Procedures relating to the discounting of receivables

Article L. 763-6. – Articles L. 313-23 to L. 313-48 are applicable in the Wallis and Futuna Islands.

#### Paragraph 4 Surety guarantees

Article L. 763-7. – Articles L. 313-50 and L. 313-51 are applicable in the Wallis and Futuna Islands.

### Section 2 Payment services

Article L. 763-7-1. – I. – Chapter IV of Part I of Book III, with the exception of the second subparagraph of paragraph II of Article L. 314-2 and of the second paragraph of Article L. 314-15, is applicable in the Wallis and Futuna Islands, without prejudice to the adaptations provided for in paragraph II.

II. – 1 In the first subparagraph of paragraph II of Article L. 314-2, the words: “or in Saint Pierre and Miquelon and the transaction is carried out in euros” are replaced by the words: “in Saint Pierre and Miquelon, New Caledonia, French Polynesia or the Wallis and Futuna Islands and the transaction is carried out in euros or in CFP francs”;

**1 bis. In paragraphs I and II of Article L. 314-2-1, the words: “or in Saint Pierre and Miquelon” are replaced by the words: “in Saint Pierre and Miquelon, New Caledonia, French Polynesia or the Wallis and Futuna Islands”;**

2 a) The heading of subsection 4 of Section 4 of Chapter IV is: “Reporting obligations where one of the payment service providers involved in the transaction is located in Saint Pierre and Miquelon, Mayotte, New Caledonia, French Polynesia, the Wallis and Futuna Islands or outside the European Economic Area”;

b) In the first paragraph of Article L. 314-15, the words: “or in Mayotte” are replaced by the words: “in Mayotte, in New Caledonia, in French Polynesia or the Wallis and Futuna Islands”.

### Section 3 Provisions applicable to credit institutions and payment institutions

Article L. 763-7-2. – Chapter V of Part I of Book III is applicable in the Wallis and Futuna Islands.

Article L. 763-7-3. – I. – Chapter VI of Part I of Book III, with the exception of the third paragraph of Article L. 316-1, is applicable in the Wallis and Futuna Islands, without prejudice to the adaptations provided for in paragraph II.

II. – 1 The first paragraph of Article L. 316-1 is replaced by the following provisions:

The officials of the Institut d’Émission d’Outre-Mer are authorised, in the performance of their duties, to seek to uncover violations of the provisions of Articles L. 312-1-1, L. 312-1-2, L. 314-12 and L. 314-13 of this code and to record them in a statement of offence;

2 In the second paragraph, the words: “The authorised officials referred to in the first paragraph” are replaced by the word: “they”.

### Section 4 Investment services and associated services

Article L. 763-8. – Part II of Book III is applicable in the Wallis and Futuna Islands.

In Articles L. 322-2 and L. 322-6, the reference to Articles L. 312-17 and L. 312-18 is deleted.

**For the purposes of these provisions, subparagraph 8 of Article L. 321-2 is worded as follows:**

**8. The credit rating service that consists of issuing an opinion through the application of a well-defined and well-established classification system that uses various rating categories indicative of the credit status of an entity, a debt, a financial obligation, a debt security, a preference share or other financial instrument, or of an issuer of such a debt or financial obligation, debt security, preference shares or other financial instrument.**

### Section 5 Payment systems and systems used for settlement and delivery of financial instruments

Article L. 763-9. - Articles L. 330-1 to L. 330-4 are applicable in the Wallis and Futuna Islands with the exception of the last sentence of paragraph I and the eighth, ninth and last subparagraphs of paragraph II of Article L. 330-1.

### Section 6 Direct marketing

#### Subsection 1 Direct marketing relating to banking transactions

Article L. 763-10. I - Articles L. 341-1 to L. 341-17 are applicable in the Wallis and Futuna Islands with the following adaptations:

a) In subparagraph 2 of Article L. 341-2, the words: “referred to in Section 3 of Chapter I of Part V of Book IV of the Town Planning Code” are deleted;

b) In subparagraph 1 of Article L. 341-3, the words: “the venture capital companies referred to in Article 1-1 of Act No. 85-695 of 11 July 1985 containing various provisions of an economic and financial nature, in relation to subscriptions to the securities they issue, as well as the equivalent institutions and firms approved in another Member State of the European Community and authorised to trade in France” are deleted; paragraph 2 of that same article is deleted;

c) In subparagraph 4 of Article L. 341-10, the words: “proposed within the framework of a mechanism governed by Part IV of Book IV of the Labour Code” are deleted.

II - Articles L. 353-1 to L. 353-4 are also applicable in the Wallis and Futuna Islands.

#### Subsection 2 Direct marketing relating to futures market transactions

Article L. 763-11. – Chapter III of Part IV of Book III is applicable in the Wallis and Futuna Islands.

Article L. 353-6 also applies there.

## Chapter IV The Markets

### Section 1 Transactions

#### Subsection 1 Definitions and scope

Article L. 764-1. – Articles L. 411-1 to L. 411-4 are applicable in the Wallis and Futuna Islands with the following adaptation:

For the purposes of Article L. 411-4, the words: “and of Order No. 45-2138 of 19 September 1945 instituting the Order of Accountants and regulating the title and the profession of Accountant” are deleted.

#### Subsection 2 General provisions

Article L. 764-2. – Articles L. 412-1 to L. 412-3 are applicable in the Wallis and Futuna Islands.

### Section 2 Trading platforms

Article L. 764-3. – Part II of Book IV is applicable in the Wallis and Futuna Islands, with the exception of Article L. 421-13, the second subparagraph of paragraph II of Article L. 421-14, the eighth paragraph of Article L. 421-17, and of Articles L. 421-20, L. 422-1, L. 424-4, L. 424-9, L. 424-10 and L. 426-1, with the following adaptations:

a) In Article L. 421-2, the words: “in Metropolitan France or the overseas *départements*” are replaced by the words: “in France”;

b) In Articles L. 421-6 and L. 424-11, the date: “1 November 2007” is replaced by the date: “1 May 2008”.

Article L. 464-2 is also applicable in the Wallis and Futuna Islands.

### Section 3 Trading in financial instruments

#### Subsection 1 General provisions

##### Paragraph 1 Transfer of title and pledging

Article L. 764-5. – Articles L. 211-17 to L. 211-19 are applicable in the Wallis and Futuna Islands.

Article L. 764-6. – Article L. 211-20 is applicable in the Wallis and Futuna Islands.

##### Paragraph 2 Clearing and assignment of receivables

Article L. 764-7. – Articles L. 211-36 to L. 211-40 are applicable in the Wallis and Futuna Islands.

#### Subsection 2 Specific ways of selling financial instruments

##### Paragraph 1 Auctions

Article L. 764-8. – Article L. 211-21 is applicable in the Wallis and Futuna Islands.

##### Paragraph 1 bis Temporary assignments

Article L. 764-8-1. – Articles L. 211-22 to L. 211-33, as well as Articles L. 432-17 to L. 432-19, are applicable in the Wallis and Futuna Islands. The tax provisions of Articles L. 211-22, L. 211-23 and L. 211-28 are replaced by locally applicable provisions of the Code Général des Impôts having the same object.

II - The provisions of Articles L. 211-22 to L. 211-26 apply likewise to the transfers with full title of securities, certificates or bills, by way of guarantee, provided for in paragraph I of Article L. 211-38 carried out over the counter in connection with financial futures transactions, the transfers of certificates referred to in subparagraph 3 of Article L. 211-22 and the transfers referred to in Article L. 330-2.



## Paragraph 2 Futures

Article L. 764-9. – Article L. 211-35 is applicable in the Wallis and Futuna Islands.

### Subsection 3 Transactions specific to the regulated markets

Article L. 764-10. - Chapter III of Part III of Book IV is applicable in the Wallis and Futuna Islands, with the following adaptations:

**Article L. 433-3 is adapted as follows:**

**1 In paragraphs I and II, the words: “regulated market of a Member State of the European Union or of another State party to the European Economic Area Agreement” are replaced by the words: “French regulated market”;**

**2 In paragraph III, the words: “of a State party to the European Economic Area Agreement” are replaced by the word: “French”.**

**In paragraphs I and V of Article L. 433-4, the words: “regulated market of a Member State of the European Union or of another State party to the European Economic Area Agreement” are replaced by the words: “French regulated market”.**

## Section 4 Clearing houses

Article L. 764-11. – I. – Part IV of Book IV is applicable in the Wallis and Futuna Islands, with the exception of the last two paragraphs of Article L. 440-2 and without prejudice to the adaptations provided for in paragraph II.

II. – Article L. 440-2 is adapted as follows:

1 In subparagraphs 1 and 2, the words: “in a Member State of the European Community or another State party to the European Economic Area Agreement” are replaced by the words: “in France”;

2 In subparagraph 4, the words: “Metropolitan” and “or in the overseas *départements*” are deleted;

3 In subparagraph 5, the words: “which is not a member of the European Community or party to the European Economic Area Agreement” are replaced by the words: “other than France” and the words: “in Metropolitan France or the overseas *départements*” are replaced by the words: “in France”;

4 In the seventh paragraph, the words: “Metropolitan” and “or in the overseas *départements*” are deleted.

III. – Article L. 464-1 is also applicable in the Wallis and Futuna Islands.

## Section V Investor protection

### Subsection 1 Reporting obligations relating to accounts

Article L. 764-12. - - I. – Articles L. 451-1-1, L. 451-1-2, L. 451-1-4, L. 451-1-6, L. 451-3, L. 465-1 and L. 465-2 are applicable in the Wallis and Futuna Islands, without prejudice to the adaptations provided for in paragraph II.

II. – 1 For the purposes of Article L. 451-1-1:

a) The words: “of a State party to the European Economic Area Agreement” are replaced by the word: “French”;

b) The words: “in the European Economic Area or a third-party country” are replaced by the word: “abroad”;

2 For the purposes of Article L. 451-1-2:

a) In paragraph I, in subparagraphs 1 and 3 of paragraph II, in paragraph III and in paragraph IV, the words: “of a State party to the European Economic Area Agreement” are replaced by the word “French”;

b) In subparagraph 3 of paragraph II, the words: “of the European Economic Area” are replaced by the words: “of France”.

### Subsection 2 Reporting obligations relating to equity interests

Article L. 764-13. – Chapter II of Part V of Book IV is applicable in the Wallis and Futuna Islands.

Articles L. 465-4 and L. 466-1 also apply there.

## Chapter V Service Providers

Article L. 765-1. – Article L. 500-1, as well as Articles L. 570-1 and L. 570-2, are applicable in the Wallis and Futuna Islands.

### Section I Banking sector institutions

Article 765-1-1. - Chapter I of Part I of Book V is applicable in the Wallis and Futuna Islands, with the exception of Articles L. 511-12, L. 511-21 to L. 511-28 and subparagraphs 1, 3 and 4 of Article L. 511-34.

**For the purposes of its provisions, the first paragraph of Article L. 511-46 is worded as follows:**

**“In the credit institutions referred to in Article L. 511-1, the commission referred to in Article L. 823-19 of the Commercial Code also monitors the risk management policy, procedures and systems.”**

Articles L. 571-1 to L. 571-9 also apply there. In the last paragraph of Article L. 511-12-1, the words: “or that rendered by the European Commission pursuant to Regulation (EEC) No. 4064/89 of the Council, of 21 December 1989, relating to the monitoring of company mergers” are deleted.

In Article L. 511-36, the words: “regulation of the European Commission” are replaced by the words: “order of the Minister for the Economy”.

#### Subsection 1 Financial holding companies

##### Paragraph 1 Common provisions

Article L. 765-2. – Article L. 515-1 is applicable in the Wallis and Futuna Islands.

##### Paragraph 2 Plant and real-estate leasing companies

Article L. 765-3. – Articles L. 515-2 and L. 515-3, as well as Article L. 571-13, are applicable in the Wallis and Futuna Islands.

##### Paragraph 3 Mutual guarantee societies

Article L. 765-4. – Articles L. 515-4 to L. 515-12 are applicable in the Wallis and Futuna Islands.

##### Paragraph 4 Real-estate credit companies

**Article L. 765-4-1. – Articles L. 515-13 to L. 515-33 are applicable in the Wallis and Futuna Islands.**

##### Paragraph 5 Housing loan companies

**Article L. 765-4-2. – Articles L. 515-34 to L. 515-39 are applicable in the Wallis and Futuna Islands.**

#### Subsection 2 Specialised financial institutions

Article L. 765-5. – Articles L. 516-1 and L. 516-2 are applicable in the Wallis and Futuna Islands.

#### Subsection 3 Financial holding companies

Article L. 765-6. – Articles L. 517-1 and L. 571-14 are applicable in the Wallis and Futuna Islands.

#### Subsection 4 Banking transaction intermediaries

Article L. 765-7. – Articles L. 519-1 to L. 519-6, as well as Articles L. 571-15 and L. 571-16, are applicable in the Wallis and Futuna Islands.

### Section 2 Payment service providers and money changers

#### Subsection 1 Payment service providers

Article L. 765-8. – Chapter I of Part II of Book V is applicable in the Wallis and Futuna Islands.

Articles L. 572-5 to L. 572-12 also apply there.

#### Subsection 2 Payment institutions

Article L. 765-8-1. – Chapter II of Part II of Book V, with the exception of Articles L. 522-12 and L. 522-13, is applicable in the Wallis and Futuna Islands.

#### Subsection 3 Agents

Article L. 765-8-2. – Chapter III of Part II of Book V, with the exception of Article L. 532-4, is applicable in the Wallis and Futuna Islands.

#### Subsection 4 Money changers

Article L. 765-8-3. – Articles L. 524-1 to L. 524-7, as well as Articles L. 572-1 to L. 572-4, are applicable in the Wallis and Futuna Islands.

### Section 3 Investment service providers

#### Subsection 1 Definitions

Article L. 765-9. – Chapter I of Part III of Book V is applicable in the Wallis and Futuna Islands, with the following adaptations:

a) In Article L. 531-2 the words and the references: “and without being entitled to claim the benefit of the provisions of Articles L. 532-16 to L. 532-27” are deleted;

b) In Article L. 531-10, the words and the references: “or an entity referred to in Article L. 532-18 or in Article L. 532-18-1” are deleted.

## Subsection 2 Conditions of admission to the profession

Article L. 765-10. – Chapter II of Part III of Book V, with the exception of Articles L. 532-16 to L. 532-27, is applicable in the Wallis and Futuna Islands, with the following adaptations:

a) In the last paragraph of Article L. 532-1, the words: “have either been authorised in another Member State of the European Community or which do not come under the law of one of those States” are replaced by the words: “have been approved in a State other than France”;

b) In Article L. 532-5, the words: “and have the benefit of the provisions of Articles L. 532-23 to L. 532-25” are deleted.

## Subsection 3 Obligations of investment service providers

Article L. 765-11. – Chapter III of Part III of Book IV is applicable in the Wallis and Futuna Islands.

Articles L. 573-1 to L. 573-7 also apply there.

## Section 4 Other service providers

Article L. 765-11-1. – Articles L. 541-1 to L. 541-7 and Articles L. 541-8-1 and L. 541-9, as well as Articles L. 573-9 to L. 573-11, are applicable in the Wallis and Futuna Islands.

Article L. 765-11-2. – Article L. 542-1 is applicable in the Wallis and Futuna Islands.

Art. L. 765-11-2-1. – Article L. 543-1 is applicable in the Wallis and Futuna Islands, with deletion of the words: “the management companies of the forestry investment companies”.

Article L. 765-11-3. – Articles L. 544-1 to L. 544-6 are applicable in the Wallis and Futuna Islands.

### For the purposes of these provisions:

**In the first paragraph of Article L. 544-4, the words: “within the meaning of Article 22 of Regulation No. 1006/2009 of the European Parliament and of the Council of 16 September 2009 on the credit rating agencies” are deleted.**

**The term “Credit rating agency” shall mean any legal entity whose activities include the issuing of credit ratings on a professional basis, the term “credit rating” shall mean any opinion issued through the application of a well-defined and well-established classification system that uses various rating categories indicative of the credit status of an entity, a debt, a financial obligation, a debt security, preference shares or other financial instruments, or of an issuer of such a debt, financial obligation or debt security, or of such preference shares or such a financial instrument, and the term “credit rating service” shall mean the activities of**

**analysing data and information and evaluating, approving, issuing and re-examining credit ratings.**

Article L. 765-11-4. – Articles L. 545-1 to 545-7 are applicable in the Wallis and Futuna Islands with the following adaptations:

a) In Article L. 545-1, the words: “within the meaning of subparagraph 25 of paragraph 1 of Article 4 of Directive 2004/34/EC of 21 April 2004” are deleted;

b) In Article L. 545-5, the words: “in Metropolitan France or in the overseas *départements*” are replaced by the words: “in France”;

c) For the purposes of Articles L. 545-1 to L. 545-7, the term “bound agent” shall mean any individual or legal entity who/which, under the entire and unconditional responsibility of a sole and unique investment service provider on behalf of which he/it acts, promotes investment services to clients, inter alia potential clients, receives and forwards the clients' instructions or orders relating to financial instruments or investment services, places financial instruments, or provides clients, inter alia potential clients, with advice on said instruments or services.

**Article L. 765-11-5. – Articles L. 546-1 to L. 546-4 are applicable in the Wallis and Futuna Islands. For the purposes of these provisions, in Article L. 546-1, the words: “the sole register referred to in Article L. 512-1 of the Insurance Code” are replaced by the words: “the register referred to in Article 1 of Act No. 2005-1564 of 15 December 2005 introducing various provisions to bring French law into line with Community law in the field of insurance”.**

## Section 5 Miscellaneous property intermediaries

Article L. 765-12. – Part V of Book V is applicable in the Wallis and Futuna Islands.

Article L. 573-8 also applies there.

## Section 6 Obligations relating to the prevention of money laundering

Article L. 765-13. – I. – Part VI of Book V, as well as Articles L. 574-1 to L. 574-4, are applicable in the Wallis and Futuna Islands, as provided for in paragraph II.

**II. – 1 In Articles L. 561-2 and L. 561-20, the references to the Insurance Code, the Mutuality Code and the Social Security Code are replaced by references to locally applicable provisions having the same object;**

2 In subparagraph 8 of Article L. 561-2, the references in Article 1 of Act No. 70-9 of 2 January 1970 regulating the conditions of practise of the activities pertaining to certain transactions in real-estate and goodwill, excluding exchanges, letting or sub-letting, seasonal or otherwise, whether unfurnished or furnished, are replaced by references to locally applicable provisions having the same object;

3 In Article L. 561-14-2, the references to Article 537 of the Code Général des Impôts and to Articles L. 83, L. 85, L. 87 and L. 89 of the Livre des Procédures Fiscales are replaced by

references to the locally applicable provisions having the same object;

4 For the application in the Wallis and Futuna Islands of the provisions of paragraph II of Article L. 561-15, either the offence referred to in the provisions of Article 1741 of the Code Général des Impôts committed by the individuals or entities to whom/which said provisions apply, or, for the individuals or entities subject to the locally established tax regulations, the fact of having fraudulently evaded or of having attempted to fraudulently evade the calculation or the partial or total payment of the taxes referred to therein, shall be deemed to constitute tax fraud;

5 For the application in the Wallis and Futuna Islands of the provisions of the last subparagraph of paragraph II of Article L. 561-23, the offence described in Article 1741 shall constitute the offence of tax fraud within the meaning of the provisions of subparagraph 6 of paragraph II of this article;

6 For the application in the Wallis and Futuna Islands of the third and fourth subparagraphs of paragraph II of Article L. 561-29, the offence described in Article 1741 of the Code Général des Impôts shall constitute the offence of tax fraud within the meaning of the provisions of subparagraph 6 of paragraph II of this article. Where the unit referred to in Article L. 561-23 has received information concerning acts of fraudulent evasion or of tentative fraudulent evasion of the calculation or of the partial or total payment of the taxes due under the locally established tax regulations, it may send it to the tax authority of the territorial community. It may also send the tax authority of the territorial community information concerning any laundering of tax fraud proceeds carried out in violation of the local regulations. In this case, the tax authority of the territorial community shall forward it to the Public Prosecutor after obtaining the approval of the Commission des Offences Fiscales referred to in Article 1741 A of the Code Général des Impôts. Said commission shall rule on the reasonably perceivable substance of the suspicions of tax fraud reported to the unit referred to in Article L. 561-23 of this code;

8 In paragraph II of Article L. 561-36, the words: “, the bodies referred to in Article L. 134-1 of the Tax Courts Code” are deleted.

## **Chapter VI Banking and Financial Authorities**

### **Section I Authorities common to credit institutions, payment institutions and investment firms**

#### **Subsection 1 Regulations**

Article L. 766-1. – Chapter I of Part I of Book VI is applicable in the Wallis and Futuna Islands.

#### **Subsection 2 The Autorité de Contrôle Prudentiel**

Article L. 766-2. – I. – Chapter II of Part I of Book VI is applicable in the Wallis and Futuna Islands, with the exception of Articles L. 612-22 and L. 612-29.

II. – Article L. 641-1 also applies there.

### **Subsection 3 Provisions specific to credit institutions, investment firms et payment institutions**

Article L. 766-3. – Chapter III of Part I of Book VI is applicable in the Wallis and Futuna Islands with the exception of Articles L. 613-31-1 to L. 613-31-10 and L. 613-33.

Article L. 641-2 also applies there.

### **Subsection 4 Comité Consultatif du Secteur Financier and Comité Consultatif de la Législation et de la Réglementation Financières**

Article L. 766-4. – Articles L. 614-1 to L. 614-3 are applicable in the Wallis and Futuna Islands with deletion, in Article L. 614-2, of the words: “and any proposed Community regulation or directive, before it is examined by the Council of the European Communities,”.

#### **Subsection 5 Other institutions**

Article L. 766-4-1. Articles L. 615-1 and L. 615-2 are applicable in the Wallis and Futuna Islands.

## **Section 2 The Autorité des Marchés Financiers**

Article L. 766-5. – I. – Articles L. 621-1 to L. 621-7-2, les I, II, III, IV, VII, VIII, IX of Article L. 621-8, Articles L. 621-8-1, L. 621-8-2, L. 621-9, with the exception of its last paragraph, L. 621-9-1 to L. 621-20-1, L. 621-22 to L. 621-35, as well as Articles L. 642-1 and L. 642-3, are applicable in the Wallis and Futuna Islands, without prejudice to the adaptations provided for in paragraph II.

II. – 1 For the purposes of paragraph I of Article L. 621-8:

a) In paragraph I, the words: “or any equivalent document required under the legislation of another State party to the European Economic Area Agreement” are deleted;

b) Paragraph III is worded as follows:

III. – The draft document referred to in paragraph I is also subject to the prior approval of the Autorité des Marchés Financiers in the cases specified in its General Regulation for any transaction carried out in France where the registered office of the issuer of the securities which are the subject of the transaction is outside the European Economic Area and where the transaction involves financial instruments whose initial public offer or assignment or first admission to a regulated market took place in France;

**2 In subparagraph d) of paragraph II of Article L. 621-15, the words: “of another Member State of the European Union or a State party to the European Economic Area Agreement” are replaced by the word: “French”. (1)**



2 For the purposes of Article L. 621-32, the words: “pursuant to Directive 2003/125/EC of the Commission of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the fair presentation of investment recommendations and disclosure of conflicts of interest” are deleted.

the same entities, or where said entities have already been sanctioned for the same facts by a final decision.

(Articles L. 766-6 and L. 766-7 were repealed by Order No.2004-823 of 19 August 2004 Art. 1 II 1 Official Journal of the French Republic 21 August 2004.)

**NB: (1) ACT No. 2010-1249 of 22 October 2010 Art. 85 III 15: this act supplements Article L. 746-5 by adding a second subparagraph 2 to the pre-existing subparagraph 2.**

### Section 3 Cooperation and exchanges of information with effect from 1 May 2008

Article L. 766-8. – I. – Articles L. 631-1, L. 631-2, **L. 631-2-1, L. 631-2-2**, L. 632-3, L. 632-7 and L. 632-13 to L. 632-17 are applicable in the Wallis and Futuna Islands, without prejudice to the adaptations provided for in paragraph II.

II. – 1 In paragraphs I and II of Article L. 632-7 and in Article L. 632-13, the words: “which is not a Member State of the European Community and not party to the European Economic Area Agreement,” are replaced by the words: “other than France”;

2 In paragraph III of Article L. 632-7, the words: “of another Member State of the European Community or another State party to the European Economic Area Agreement or a third-party country” are replaced by the words: “other than France”;

3 In Article L. 632-14:

a) In the first and fourth paragraphs, the words: “of Articles L. 632-12 and L. 632-13”, are replaced by the words: “of Article L. 632-13”;

b) In the second paragraph, the words: “Articles L. 632-12 and L. 632-13” are replaced by the words: “Article L. 632-13”;

4 In Article L. 632-15:

a) The words: “Articles L. 632-12 and L. 632-13” are replaced by the words: “Article L. 632-13”;

b) The words: “and not party to the European Economic Area Agreement” are replaced by the words: “other than France”;

5 In Article L. 632-16:

a) In the first and second subparagraphs, the words: “which is not a Member State of the European Community and not party to the European Economic Area Agreement” are replaced by the words: “other than France”;

b) In the third paragraph, the words: “of Article L. 632-5 and of paragraph III of Article L. 632-7” are replaced by the words: “of paragraph III of Article L. 632-7”;

c) A paragraph has been added, worded as follows:

The Autorité des Marchés Financiers and the Autorité de Contrôle Prudentiel may refuse to accede to requests from the authorities of States other than France relating to the activities referred to in the first paragraph only where the nature thereof is likely to undermine French sovereignty, security or public order, or where criminal proceedings have already been instituted in France on the basis of the same facts and against